



California Regulatory Notice Register

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The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

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PROPOSED ACTION ON REGULATIONS

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TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, under the authority vested in it by Section 83112 of the Government Code, proposes to adopt, amend, or repeal regulations in title 2, division 6 of the California Code of Regulations. The Fair Political Practices Commission will consider the proposed regulations at a public hearing on or after **April 12, 2007**, at **approximately 9:45 a.m.** Written comments must be received at the Commission offices no later than 5 p.m. on **April 10, 2007**.

BACKGROUND/OVERVIEW

In 2006 Senate Bill 145 took effect as urgency legislation. SB 145 (Stats. 2006, Ch. 624, urgency) amended the “net debt” provision (section 85316) of the Political Reform Act (the “Act”). The net debt provision prohibits post-election fundraising for any purpose other than to pay net debt. This rule, while not expressly prohibiting officeholders from using campaign committees to raise funds to pay officeholder expenses, prohibited fundraising in campaign accounts for such purposes after an election. Thus, unless the officeholder had a significant amount of excess campaign funds after an election, the officeholder would be required to pay officeholder expenses from a campaign account for a future election to that same office. More importantly, officeholders who were termed out and had no other campaign committees for future office had no method of raising officeholder funds or paying officeholder expenses.

SB 145 allows the establishment of a separate officeholder account for officeholder expenses. Additionally, SB 145 requires that:

- Contributors and elected state officers are subject to calendar year contribution limits.
- Elected state officers are subject to aggregate contribution limits on a calendar year basis.

- Contributions received for officeholder purposes are cumulated with contributions to the officeholder’s election to any state office that he or she may seek during the term of office to which he or she is currently elected, including reelection to the office he or she currently holds.
- The contribution limitations will be adjusted in January of every odd-numbered year to reflect any increase or decrease in the Consumer Price Index (rounded to the nearest \$100).
- None of the expenditures made by elected state officers pursuant to this subdivision shall be subject to the voluntary expenditure limitations in section 85400.

Currently, section 85316(a) and regulation 18531.6 and 18531.61 provide that a contribution for an election may be accepted by a candidate for elective state office after the date of the election *only* to the extent that the contribution does not exceed net debts outstanding from the election and the contribution does not otherwise exceed the applicable contribution limit for that election.

REGULATORY ACTION

A. Elected State Officeholder Bank Accounts, Committees, and Reporting. (Regulation 18531.62.)

This regulation provides the basic rules for an officeholder to follow in order to establish and maintain an officeholder account. The proposed regulation deals with the following:

- The date that a candidate may create an officeholder account and when the officeholder may begin fundraising.
- When the requirement to establish an officeholder account is triggered.
- The location and name requirements applicable to creation of these accounts.
- Controlled committee requirements for officeholder fundraising.
- The filing requirements applicable to such committees.
- The purposes for which officeholder funds may be expended.

This regulation also includes optional provisions for the Commission to consider:

- The first option asks should contributions or transfers by a candidate from his or her campaign committee to his or her officeholder committee be permitted or limited.

- The next option would allow the Commission to consider defining the impermissible uses of officeholder funds by either reference to the list of “election activities” in section 82015 or the list of “campaign expenses” set forth in regulation 18525. The Commission also may choose to have no definition.
- The final option would bar the use of officeholder funds for administrative fines or judgments.

B. Elected State Officeholder Contribution Cumulation. (Regulation 18531.63.)

This regulation interprets and implements section 85316’s requirement that officeholders who are campaigning for another state elective office during their term of office must cumulate officeholder contributions with contributions provided to the other campaign accounts of the officeholder. The cumulation requirement affects both the fundraising for campaign purposes and for officeholder purposes. The regulation would:

- Describe the cumulation rule as applied to campaign contributions for future terms of offices. Under the proposed regulation, in order to determine if an elected state officer and a specific contributor are in compliance with the campaign contribution limits of sections 85301, and 85302, any officeholder contribution (or officeholder contributions in the aggregate) received by the elected state officer during the elected state officer’s term of office shall be cumulated (in full) with any other contribution from that same contributor for any other elective state office that the officeholder has filed a statement of intention to seek.
- Provide that the cumulation rule is only triggered where the officerholder has filed a statement of intention to seek an elective state office during the term of office for which the officeholder contribution account and committee exist.
- Provide that where the cumulation rule is applied to primary and general elections, the proposed regulation cumulates contributions toward the contribution limits applicable to the primary and general election in the aggregate. In other words, since the candidate could get two contributions from the same contributor for an election to office (one in the primary and one in the general), the cumulation rules would be applied to make sure that the cumulated amount does not exceed the combined limit in the primary and the general.

The proposed regulation also clarifies the following:

- Where an officeholder files more than one statement of intent during his or her term of office, the lowest limits applicable to the two offices are applied.
- The cumulation rule also applies against the limits applicable to the officeholder’s officeholder account and fundraising. It provides that the applicable contribution limit to an elected state officer’s officeholder account is the lower of the following: (a) the calendar year contribution limits applicable to the officeholder committee pursuant to section 85316 (aggregate and individual); or (b) the lowest per election contribution limit applicable to any other elective state office that the officeholders has filed a statement of intention to seek during the officeholder’s current term of office.
- In order to ensure that contributors are aware that making an officeholder contribution may preclude the contributor from making a campaign contribution to the officeholder’s campaign committees for future office and to protect the contributor from inadvertent violation of the Act’s contribution limits, the regulation would require a specific statement in solicitations warning potential contributors of the effect of making officeholder contributions on future elections of the officeholder.
- The regulation implements the return requirement of the new statute when the amount exceeds the specified limits. For monetary contributions, the regulation would require that amount exceeding the limit shall be returned within 14 days of receipt or by the date the statement of intention to be a candidate is filed, whichever is earlier. Similarly, for a non-monetary contribution that exceeds the limit, the excess must be reimbursed to the donor within 14 days of receipt or the date the statement of intention to be a candidate is filed, whichever is earlier.
- The proposed regulation includes an exemption from the return requirement if the officeholder has already expended all their officeholder funds and does not intend to raise future officeholder funds for that office.

C. Winding Down Elected State Officer Officeholder Committees. (Regulation 18531.64.)

Similar to regulation 18531.62 which establishes when officeholder fundraising may begin, regulation 18531.64 sets out when the fundraising for officeholder purposes must end. The regulation proposes that no

contributions may be accepted for officeholder purposes after the date the term of office for which the committee was formed ends or the officeholder leaves that office, whichever is earlier. The regulation would also allow a winding down period of 90 days to complete final officeholder business and close the account and committee. An option for the Commission to consider is whether a closed officeholder committee may be reopened, and if so, under what procedure.

This regulation also provides the following:

- Prior to the required date of termination, an individual currently holding elective office may redesignate the officeholder account (and any remaining funds therein) for a future term to the same elective office by amending the Statement of Organization for the committee. The funds remaining in the original account may be carried over without attribution. Note that this redesignation rule as proposed only applies to future terms in the same elective office (i.e., Assembly 2006 and the second term in the same seat, Assembly 2008.)
- Standards for disposal of officeholder funds after the term of office ends.

D. Biennial Adjustments — Amendments to Regulations 18544 and 18545.

Regulation 18544 has been amended to include periodic adjustments to the officeholder limits using the same formula. Because the statute was enacted as an urgency statute late in 2006, the first adjustment was calculated for January 2007. However, since the base year for the CPI adjustment is 2006, the net change was zero. Thus, regulation 18545 has been amended to reflect the current officeholder contribution limits that are identical to those set out in the new statutory language.

FISCAL IMPACT STATEMENT

Fiscal Impact on Local Government. These regulations will have no fiscal impact on any local entity or program.

Fiscal Impact on State Government. These regulations will have no fiscal impact on any state entity or program.

Fiscal Impact on Federal Funding of State Programs. These regulations will have no fiscal impact on the federal funding of any state program or entity.

AUTHORITY

Section 83112 provides that the Fair Political Practices Commission may adopt, amend, and rescind rules

and regulations to carry out the purposes and provisions of the Political Reform Act.

REFERENCE

The purpose of these regulations is to implement, interpret and make specific Government Code section 85316.

CONTACT

Any inquiries should be made to John W. Wallace, Fair Political Practices Commission, 428 J Street, Suite 800, Sacramento, CA 95814; telephone (916) 322-5660 or 1-866-ASK-FPPC. Proposed regulatory language can be accessed at www.fppc.ca.gov.

ADDITIONAL COMMENTS

After the hearing, the Commission may adopt or repeal the proposed regulations if they remain substantially the same as described or as in the text originally made available to the public. The Commission may make changes to the proposed regulations before their adoption or repeal.

TITLE 4. CALIFORNIA HORSE RACING BOARD

CALIFORNIA HORSE RACING BOARD TITLE 4, DIVISION 4, CALIFORNIA CODE OF REGULATIONS

NOTICE OF PROPOSAL TO AMEND RULE 1843.2. CLASSIFICATION OF DRUG SUBSTANCES AND TO ADD RULE 1843.3. PENALTIES FOR MEDICATION VIOLATIONS

The California Horse Racing Board (Board) proposes to amend/add the regulations described below after considering all comments, objections or recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Board proposes to amend Rule 1843.2, Classification of Drug Substances, and add Rule 1843.3, Penalties for Medication Violations. The proposed amendment to Rule 1843.2 would require the stewards to consider the classification of a drug substance as referenced in the California Horse Racing Board Penalty Category

Listing by Classification when adjudicating a hearing for the funding of such drug substance in a test sample taken from a horse participating in a race. The proposed addition of Rule 1843.3, Penalties for Medication Violations, would establish penalty guidelines the Board, the stewards or the hearing officer shall consider in reaching a decision on medication violations.

PUBLIC HEARING

The Board will hold a public hearing starting at **9:30 a.m., Thursday, April 19, 2007**, or as soon after that as business before the Board will permit, at the **Arcadia City Hall, 240 West Huntington Drive, Arcadia, California**. At the hearing, any person may present statements or arguments orally or in writing about the proposed action described in the informative digest. It is requested, but not required, that persons making oral comments at the hearing submit a written copy of their testimony.

WRITTEN COMMENT PERIOD

Any interested persons, or their authorized representative, may submit written comments about the proposed regulatory action to the Board. The written comment period closes at **5:00 p.m., on April 16, 2007**. The Board must receive all comments at that time; however, written comments may still be submitted at the public hearing. Submit comments to:

Harold Coburn, Regulation Analyst
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone (916) 263-6397
Fax: (916) 263-6042
E-Mail: harolda@chrb.ca.gov

AUTHORITY AND REFERENCE

Authority cited for Rule 1843.2: Sections 19580, 19581 and 19582, Business and Professions (B&P) Code. Reference: Section 19580, 19581 and 19582 B&P Code.

Authority cited for Rule 1843.3: Sections 19461, 19580, 19581 and 19582, B&P Code. Reference: 19461, 19580, 19581 and 19582, B&P Code, and Section 11425.50, Government Code.

Reference cited for Rule 1843.2: B&P Code Sections 19580, 19581 and 19582 authorize the Board to adopt the proposed regulation, which would implement, interpret or make specific Sections 19580, 19581 and 19582, B&P Code.

Reference cited for Rule 1843.3: B&P Code Sections 19461, 19580, 19581 and 19582 authorize the Board to adopt the proposed regulation, which would implement, interpret or make specific Sections 19461, 19580, 19581 and 19582, B&P Code and Section 11425.50, Government Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

B&P Code Section 19580 provides that the Board shall adopt regulations to establish policies, guidelines, and penalties relating to equine medication to preserve and enhance the integrity of horse racing in California. B&P Code Section 19581 states no substance of any kind shall be administered by any means to a horse after it has been entered to race in a horse race, unless the Board has, by regulation, specifically authorized the use of the substance and the quantity and the composition thereof. B&P Code Section 19582 states violations of Section 19581, as determined by the Board are punishable as set forth in regulations adopted by the Board. The Board may classify violations of Section 19581 based on each class of prohibited drug substances, prior violations within the previous three years, and prior violations within the violator's lifetime. The Board may provide for the suspension of a license for not more than three years, except as provided in subdivision (b), or a monetary penalty of not more than fifty thousand dollars, or both, and disqualification from purses, for a violation of Section 19581. The actual amount of the monetary penalty imposed pursuant to this paragraph shall be determined only after due consideration has been given to all the facts, circumstances, acts, and intent of the licensee, and shall not be solely based on the trainer-insurer rule, as established in Section 1843 and 1887 of Title 4 of the California code of Regulations. The punishment for second and subsequent violations of Section 19581 shall be greater than the punishment for a first violation of Section 19581 with respect to each class of prohibited drug substances, unless the administrative law judge, in findings of fact and conclusions of law filed with the Board, concludes that a deviation from this general rule is justified. A third violation of Section 19581 during the lifetime of the licensee, determined by the Board to be at a class I or class II level, may result in the permanent revocation of the person's license. The administrative law judge shall, after consideration of the circumstances surrounding a violation specified in paragraph (1), file a decision with the Board that includes findings of fact and conclusions of law. Any person whose license is suspended or revoked pursuant to this section shall not be entitled to receive any material benefit or remuneration in any capacity or from any business activity permitted or allowed by the

license during any period of its suspension or revocation. The penalties provided by this section are in addition to any other civil, criminal, and administrative penalties or sanctions provided by law, and do not supplant, but are cumulative to, other penalties or sanctions. B&P Code Section 19461 provides that every license granted under this chapter is subject to suspension or revocation by the Board in any case where the Board has reason to believe that any condition regarding it has not been complied with, or that any law, or any rule or regulation of the Board affecting it has been broken or violated. All proceedings to revoke a license shall be conducted in accordance with Chapter 5 of Part 1 of Division 3 of Title 2 of the Government Code. Government Code Section 11425.50 states the decision shall be in writing and shall include a statement of the factual and legal basis for the decision.

The Board proposes to amend Rule 1843.2 to require the stewards to consider the classification of a drug substance as referenced in the California Horse Racing Board Penalty Category Listing by Classification (1/07) when adjudicating a hearing for the finding of a drug substance in an official test sample taken from a horse participating in a race. The California Horse Racing Board Penalty Category Listing by Classification (1/07) is incorporated by reference into Rule 1843.2. The incorporated document is based on the Association of Racing Commissioners International (ARCI) Uniform Classification Guidelines for Foreign Substances (4/05). The reference to the ARCI document is stated in the regulation as the Board's Equine Medical Director wished the industry to know the source material for the Board's penalty classification scheme. The proposed amendment to Rule 1843.2 deletes the Class 1 through 7 classifications of drug substances because they have been replaced by the classifications under the form California Horse Racing Board Penalty Category Listing by Classification (1/07).

The Board proposes to add Rule 1843.3 to provide for penalties for medication violations. Subsection 1843.3(a) states that in reaching a decision regarding a penalty the Board, the Board of Stewards or hearing officer shall consider the penalties set forth in Subsections (e) and (f) of Rule 1843.3, as well as aggravating and mitigating circumstances. However, if the facts of the case present mitigating or aggravating factors, deviation from such penalties may be appropriate. Subsection 1843.3(b) lists some of the mitigating circumstances, which must be considered. These factors will allow the party conducting a hearing to look at the totality of the circumstances surrounding the medication violation. Subsection 1843.3(c) states that if a determination is made that an official pre or post race test sample contains any drug substance, medication, metabolites or analogues thereof foreign to the horse,

whose use is not expressly authorized in Division 4 of Title 4 of the California Code of Regulations (CCR), or any drug substance, medication or chemical authorized in Article 15 of Title 4 of the CCR, the Board shall consider the classification of such drug substance as listed in Rule 1843.2 of Division 4, as well as the California Horse Racing Board's Penalty Categories Listing by Classification, which is incorporated by reference in Rule 1843.2. The drug classifications and penalty categories listed under Rule 1843.2 will provide guidance to the Board for the purpose of reaching a decision on a penalty for violation of B&P Code Section 19581. Subsection 1843.3(d) provides that a penalty that is administered shall be greater than the last penalty administered to the licensee for a violation concerning the same class of drug substance pursuant to B&P Code Section 19582(a)(4). This means that from the effective date of Rule 1843.3, each subsequent violation — within the same class of drug substance — shall be greater than a previous violation, unless there is a finding that deviation from the general rule is justified. Violations that predate the effective date of Rule 1843.3 may be considered as aggravating circumstances, but the penalties arising from such violations will not figure in the application of penalties as listed in Subsection 1843.3(e). Subsection 1843.3(e) provides a chart of penalties for the finding of a drug substance in an official pre or post race test sample. The chart is divided by drug penalty category. The drug penalty categories are named in the form California Horse Racing Board Penalty Categories Listing by Classification (1/07), which is incorporated in Rule 1843.2. Category "A" penalties are the most severe and are for drugs that are stimulants or depressants that have the highest potential to affect performance and that have no generally accepted medical use in the racing horse. Many of the category "A" drugs are Drug Enforcement Agency schedule II substances. Category "B" penalties are related to drugs that may not have generally accepted medical use in the racing horse, but the pharmacology of which suggests less potential to affect performance than category "A" drugs. An additional category "B" penalty scheme addresses total carbon dioxide (TCO₂) violations. The category "B" TCO₂ penalty scheme is two-tiered with the first tier relating to TCO₂ offenses of greater than 37.0 millimoles per liter of blood serum or plasma, but less than 39 millimoles. The second tier is for violations of greater than 39.0 millimoles. Two category "C" charts also exist. The first category "C" chart sets forth penalties for the presence of more than one authorized non-steroidal anti-inflammatory drug (NSAID) in an official sample and the overage of a permitted NSAID. The second category "C" chart sets forth penalties for all other drug substances which the California Horse Racing Board Penalty Categories Listing by Classification

categorize as warranting a category “C” penalty. All penalty categories are divided into licensed trainer and licensed owner penalties. Board Rule 1887, Trainer to Insure Condition of Horse, states the trainer is the absolute insurer of and responsible for the condition of the horse. As such, the trainer receives the brunt of any penalties associated with a drug violation. Owners can feel the effect of a violation if the purse is redistributed. However, that happens only under certain circumstances. Rule 1843.3 recognizes that owners can have some culpability in drug positives. For the vast majority of owners such culpability is simply a failure to voice displeasure, or engage a different trainer after one or more medication violation. The penalty scheme for owners under Rule 1843.3 is designed to nudge a complacent owner into action. Subsection 1843.3(f) provides for the finding of drug substances that are categorized as warranting a category “D” penalty. Category “D” drugs are therapeutic agents for which concentration limits have been established. Subsection 1843.3(g) states unclassified drugs or metabolites of such drugs shall be treated as a category “A” penalty until classified by the Board. Performance enhancing drugs are continually evolving, so it is not impossible for unclassified drug substances to be present in an official test sample. To ensure the integrity of horse racing the Board has determined that unclassified drug substances shall be treated as a class “A” penalty until its effect on the performance of the horse is known. Board Rule 1842, Veterinarian Report, requires every veterinarian who treats a horse within the inclosure to report to the official veterinarian in writing the name of the horse treated, the name of the trainer of the horse, the time of treatment, and any other information requested by the official veterinarian. Subsection 1843.3(h) restates this requirement by providing that the administration of a drug substance to a racehorse must be documented by submission of a Confidential Veterinarian Report as required by Rule 1842. Subsection 1843.3(i) states a veterinarian or an owner who is found responsible for the administration to a horse of any drug substance that results in a positive test may be subject to the same penalties set for the licensed trainer, and his presence may be required at any hearings relative to the case. Licensed veterinarians and owners currently are not held responsible for positive test findings. Subsection 1843.3(i) allows veterinarians and owners to be subject to the same penalties as a trainer if they — by direction or action — are responsible for the administration of a drug substance. Subsection 1843.3(i) defines “owner” as the individual owner (natural person) or entity that owns the horse from which the pre or post race test was taken, and states any penalty for a violation will be imposed on the entity that owns the horse. Subsection 1843.3(i)(1) provides that any veterinarian found to be involved in the

administration of any drug in penalty category “A” shall be referred to the California Veterinary Medical Board (CVMB) for consideration of further disciplinary action. Such a referral will be made due to the serious nature of penalty category “A” drugs. Subsection 1843.3(i)(2) states the Board’s Equine Medical Director may decide to refer to the CVMB a veterinarian found to be involved in the administration of any drug in penalty category “B” and “C.” The discretion for referral is left to the Equine Medical Director, as drugs in penalty categories “B” and “C” are not as serious. Subsection 1843.3(j) states any licensee found in violation of California criminal statutes may be referred to the appropriate law enforcement agency. This is a recommendation from the Racing Medication and Testing Consortium. It is illegal to possess many of the drugs listed in penalty category “A.” Subsection 1843.3(k) precludes a trainer who is suspended because of a medication violation from benefiting financially during his period of suspension, and states the concept includes, but is not limited to, ensuring horses are not transferred to licensed family members. Trainers are currently able to transfer horses under their care to licensed family members, or they may have surrogates — such as an assistant trainer — conduct their business. Subsection 1843.3(l) requires any trainer who is suspended 60 days or more to be banned from any inclosure under the jurisdiction of the Board. The trainer shall also forfeit all stall space and shall remove all advertisements, training-related equipment, tack and other property from the inclosure. This guarantees that any trainer under such a suspension shall not be able to continue operating within the inclosure.

DISCLOSURE REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: none.

Cost or savings to any state agency: none.

Cost to any local agency or school district that must be reimbursed in accordance with Government Code Section 17500 through 17630: none.

Other non-discretionary costs or savings imposed upon local agencies: none.

Cost or savings in federal funding to the state: none.

The Board has made an initial determination that the proposed amendment of Rule 1843.2 or the addition of Rule 1483.3 will not have a significant statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states.

Cost impact on representative private persons or businesses: The Board is not aware of any cost impacts that a representative private person or business would

necessarily incur in reasonable compliance with the proposed action.

Significant effect on housing costs: none.

The adoption of the proposed amendment of Rule 1843.2 or the addition of Rule 1843.3 will not (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.

Effect on small businesses: none. The proposal to amend Rule 1843.2 or the addition of Rule 1843.3 does not affect small businesses because horse racing is not a small business under Government Code Section 11342.610.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative considered, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome on affected private persons than the proposed action.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation at the scheduled hearing or during the written comment period.

CONTACT PERSON

Inquiries concerning the substance of the proposed action and requests for copies of the proposed text of the regulation, the initial statement of reasons, the modified text of the regulation, if any, and other information upon which the rulemaking is based should be directed to:

Harold Coburn, Regulation Analyst
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone: (916) 263-6397
E-mail: harolda@chrb.ca.gov

If the person named above is not available, interested parties may contact:

Jacqueline Wagner, Manager
Policy and Regulations
Telephone: (916) 263-6041

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its offices at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, and the initial statement of reasons. Copies may be obtained by contacting Harold Coburn, or the alternative contact person at the address, phone number or e-mail address listed above.

AVAILABILITY OF MODIFIED TEXT

After holding a hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed texts, the modified texts, with changes clearly marked, shall be made available to the public for at least 15 days prior to the date on which the Board adopts the regulations. Requests for copies of any modified regulations should be sent to the attention of Harold Coburn at the address stated above. The Board will accept written comments on the modified regulation for 15 days after the date on which it is made available.

AVAILABILITY OF STATEMENT OF REASONS

Requests for copies of the final statement of reasons, which will be made available after the Board has adopted the proposed regulations in their current or modified form, should be sent to the attention of Harold Coburn at the address stated above.

BOARD WEB ACCESS

The Board will have the entire rulemaking file available for inspection throughout the rulemaking process at its web site. The rulemaking file consists of the notice, the proposed text of the regulation and the initial statement of reasons. The Board's web site address is: www.chrb.ca.gov.

TITLE 8. OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

NOTICE OF PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING OF THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD AND NOTICE OF PROPOSED CHANGES TO TITLE 8 OF THE CALIFORNIA CODE OF REGULATIONS

Pursuant to Government Code Section 11346.4 and the provisions of Labor Code Sections 142.1, 142.2, 142.3, 142.4, and 144.6, the Occupational Safety and Health Standards Board of the State of California has set the time and place for a Public Meeting, Public Hearing, and Business Meeting:

PUBLIC MEETING: On **April 19, 2007**, at 10:00 a.m. in Auditorium of the State Resources Building 1416 Ninth Street, Sacramento, California 95814.

At the Pubic Meeting, the Board will make time available to receive comments or proposals from interested persons on any item concerning occupational safety and health.

PUBLIC HEARING: On **April 19, 2007**, following the Public Meeting in the Auditorium of the State Resources Building 1416 Ninth Street, Sacramento, California 95814.

At the Public Hearing, the Board will consider the public testimony on the proposed changes to occupational safety and health standards in Title 8 of the California Code of Regulations.

BUSINESS MEETING: On **April 19, 2007**, following the Public Hearing in the Auditorium of the State Resources Building 1416 Ninth Street, Sacramento, California 95814.

At the Business Meeting, the Board will conduct its monthly business.

DISABILITY ACCOMMODATION NOTICE

Disability accommodation is available upon request. Any person with a disability requiring an accommodation, auxiliary aid or service, or a modification of policies or procedures to ensure effective communication and access to the public hearings/meetings of the Occupational Safety and Health Standards Board should contact the Disability Accommodation Coordinator at (916) 274-5721 or the state-wide Disability Accommodation Coordinator at 1-866-326-1616 (toll free). The state-wide Coordinator can also be reached through the California Relay Service, by dialing 711 or 1-800-735-2929 (TTY) or 1-800-855-3000 (TTY-Spanish).

Accommodations can include modifications of policies or procedures or provision of auxiliary aids or services. Accommodations include, but are not limited to, an Assistive Listening System (ALS), a Computer-Aided Transcription System or Communication Access Realtime Translation (CART), a sign-language interpreter, documents in Braille, large print or on computer disk, and audio cassette recording. Accommodation requests should be made as soon as possible. Requests for an ALS or CART should be made no later than five (5) days before the hearing.

NOTICE OF PROPOSED CHANGES TO TITLE 8 OF THE CALIFORNIA CODE OF REGULATIONS BY THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

Notice is hereby given pursuant to Government Code Section 11346.4 and Labor Code Sections 142.1, 142.4 and 144.5, that the Occupational Safety and Health Standards Board pursuant to the authority granted by Labor Code Section 142.3, and to implement Labor Code Section 142.3, will consider the following proposed revisions to Title 8, Low Voltage Electrical Safety Orders and Elevator Safety Orders of the California Code of Regulations, as indicated below, at its Public Hearing on **April 19, 2007**.

1. **TITLE 8:** **LOW VOLTAGE ELECTRICAL SAFETY ORDERS**
Chapter 4, Subchapter 5, Article 3
Section 2320.2
Energized Equipment or Systems
2. **TITLE 8:** **ELEVATOR SAFETY ORDERS**
Chapter 4, Subchapter 6
Sections 3000, 3001, 3009, 3094.2, 3120.6, and 3137
New Sections 3140, 3141, 3141.1 through 3141.13, 3142, 3142.1, 3142.2, 3143, 3144, 3145, and 3146
Revisions to the Elevator Safety Orders

Descriptions of the proposed changes are as follows:

1. **TITLE 8:** **LOW VOLTAGE ELECTRICAL SAFETY ORDERS** Chapter 4,
Subchapter 5, Article 3
Section 2320.2
Energized Equipment or Systems

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

This rulemaking action is initiated as a result of a Division of Occupational Safety and Health (Division) memorandum dated December 19, 2002, and a Division document titled "Request For New or Change In Existing Safety Order" dated December 13, 2002. Section 2320.2 provides the requirements in the Low Voltage Electrical Safety Orders (LVESO) for work performed on exposed energized parts of equipment or systems. Additionally, Section 2320.2 requires the use of suitable personal protective equipment and safeguards when work is performed on exposed parts of energized equipment or systems.

However, Section 2320.2 does not establish a hazard threshold voltage for worker exposure. Consistent with federal OSHA standards, the Division recommends an amendment that would clarify that suitable protective equipment, such as approved insulating gloves or insulated tools, is not required when working on exposed parts of electrical equipment or systems energized at less than 50 volts. Federal OSHA and the National Electrical Code recognize 50 volts as the threshold where employees must be protected from contact with live parts of electrical equipment.

The Division stated that Section 2320.2 does not address provisions for the care and maintenance of insulating gloves. In order to be in compliance with existing requirements for the in-service care and testing of insulating gloves, the employer must be aware that the General Industry Safety Orders (GISO) require that personnel protective equipment be used in accordance with the manufacturer's instructions. Therefore, the proposal would provide clarity for the employer by incorporating by reference into Section 2320.2 the manufacturer's recommendations for compliance with the American Society for Testing Materials (ASTM) F 496-02a standard that addresses the in-service care of insulating gloves. The proposal includes an update to the existing reference to the ASTM D 120-95, Standard Specification for Rubber Insulating Gloves and the ASTM F 1505-94, Standard Specification for Insulated and Insulating Hand Tools to a current edition of each.

Section 2320.2. Energized Equipment or Systems

LVESO Section 2320.2 provides that work shall not be performed on the exposed parts of energized parts of equipment or systems until a number of listed conditions and work procedures are met.

Subsection (a)(3)

Existing subsection (a)(3) requires that suitable personal protective equipment and safeguards (i.e., approved insulated gloves or insulated tools) are provided and used for work on energized parts of equipment or systems. An exception is proposed for this subsection that clarifies insulating gloves or insulated tools are not required for work on parts or systems energized at less than 50 volts. The effect of this amendment will be to specify a hazard threshold voltage for worker exposure. The proposed amendment is consistent with federal OSHA standards that recognize 50 volts as the starting point where unprotected contact with energized parts can be hazardous.

Subsection (a)(3)(A)

Existing subsection (a)(3)(A) in part requires that rubber insulating gloves shall meet the provisions of the ASTM D 120-95, Standard Specification for Rubber Insulating Gloves, which is incorporated by reference. An amendment would update the outdated 1995 reference for this ASTM standard and reference the 2002 edition (ASTM D 120-02a). The ASTM D 120 standard prescribes the design and testing protocols for manufacturers of insulated gloves to ensure that the gloves will provide suitable protection for the rated voltages allowed for each class of insulated glove. Rubber insulated gloves are designated in six different classes depending on the level of protection they provide and are designated as Class 00, Class 0, Class 1, Class 2, Class 3, and Class 4. Class 00 and 0 rated gloves are used in many low voltage work operations as they provide a maximum use for protection of 500 volts AC and 1,000 volts AC, respectively.

The manufacturers of rubber insulating gloves already follow the current editions of the ASTM standards for the design of insulated gloves and for protocols on how to test gloves to ensure that the gloves will provide protection from electrical hazards for the class of glove used. Therefore, the proposed amendment would have the effect of providing clarity to the standard and would reference the current edition of the ASTM D 120 standard that is more readily available and used by the electrical industry.

Another amendment proposed for subsection 2320.2(a)(3)(A) would clarify that rubber insulating gloves must be maintained in accordance with the ASTM F 496-02a Standard Specification for In-Service Care of Insulating Gloves and Sleeves, which is incorporated by reference in the proposal. The High Voltage Electrical Safety Orders¹ (HVESO) currently in-

¹ The High Voltage Electrical Safety Orders with some exceptions, apply to electrical installations and electrical equipment operating or intended to operate on systems of more than 600 volts between conductors and all work performed directly on or in proximity to such electrical installations, equipment or systems. [See HVESO Section 2706(a)]

corporate by reference the ASTM F 496–97 standard which in part specifies that the employer is responsible for the periodic visual and electrical re-testing of all insulating gloves. The LVESO are applicable to work on electrical installations and equipment operating at 600 volts or less. For the LVESO, the care, maintenance and use of rubber insulating gloves is addressed in the GISO Section 3380(c) for personal protective equipment. GISO Section 3380(c) states that the employer shall assure that the employee is instructed and uses personal protective equipment in accordance with the manufacturer's instructions. The manufacturers instructions state that rubber insulating gloves must be electrically retested based on the requirements of the latest revision of the ASTM F 496 standard.

The proposed amendment would clarify for the employer performing work within the scope of Section 2320.2 that rubber insulating gloves must be maintained in accordance with the ASTM F 496–02a standard. For some employers that are not currently following the manufacturers recommendations to electrically retest rubber insulating gloves, the proposed amendment would have the effect of making it more apparent that rubber insulating gloves used in low voltage applications must also be maintained in accordance with the ASTM F 496–02a standard.

Subsection (a)(3)(B)

Existing subsection (a)(3)(B) requires that insulated tools shall meet the provisions of the ASTM F 1505–94, Standard Specification for Insulating Hand Tools, which is incorporated by reference. An amendment is proposed that would update the referenced 1994 version of this standard to the 2001 edition of ASTM F 1505. The 2001 edition of this ASTM standard includes several provisions that are not addressed in the 1994 standard such as the design of insulating tweezers and instructions for the design of insulating tools used in extremely low temperatures. The manufacturers of insulating tools already follow the current editions of the ASTM standards for the design of insulated tools to ensure suitable protection from electrical hazards. Therefore, the proposed amendment would have the effect of providing clarity to the standard and would reference an edition of the ASTM F 1505 standard that is more readily available and used by the electrical industry.

DOCUMENTS INCORPORATED BY REFERENCE

1. American Society for Testing Materials (ASTM) D 120–02a, Standard Specification for Rubber Insulating Gloves.
2. ASTM F 496–02a, Standard Specification for In-Service Care of Insulating Gloves and Sleeves.

3. ASTM F 1505–01, Standard Specification for Insulated and Insulating Hand Tools.

These documents are too cumbersome or impractical to publish in Title 8. Therefore, it is proposed to incorporate the documents by reference. Copies of these documents are available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Standards Board Office located at 2520 Venture Oaks Way, Suite 350, Sacramento, California.

SPECIFIC TECHNOLOGY OR EQUIPMENT

This proposal will not mandate the use of specific technologies or equipment. In Section 2320.2(a)(3) the proposal would update the existing reference to the ASTM D 120–95, Standard Specification for Rubber Insulating Gloves to reference the current edition of the standard. Additionally, the proposal would update the existing reference to ASTM F 1505–94, Standard Specification for Insulated and Insulating Hand Tools to the current edition.

Existing provisions in the GISO, Section 3380(c) state that the employer shall assure that the employee is instructed and uses personal protective equipment in accordance with the manufacturer's instructions. The manufacturers of rubber insulating gloves instructions state that rubber insulating gloves must be electrically retested based on the requirements of the ASTM F 496 Standard Specification for In-Service Care of Insulating Gloves and Sleeves. The ASTM F 496 standard in part specifies that all rubber insulating gloves used for service must be electrically retested at intervals not to exceed 6 months. The purpose for periodic, electrically retesting rubber insulating gloves is to ensure that the gloves are in suitable condition to insulate (protect) workers from hazardous contact with energized parts or equipment that could result in serious or fatal injuries. The electrical test can identify hazardous defects or damage to rubber insulated gloves that is not readily seen or identified in typical daily physical, visual, air and/or water filled inspections.

A proposed amendment for Section 2320.2(a)(3)(A) would clarify that rubber insulating gloves must be maintained in accordance with the ASTM F 496–02a standard. In light of the existing provisions contained in GISO Section 3380(c), the proposed amendment does not impose new requirements upon the employer. However, the proposal does provide clarity and makes it readily evident within the LVESO that rubber insulating gloves used in low voltage applications (e.g. 00 and 0 class gloves are rated for protection up to 500 volts and 1000 volts AC respectively) must be electrically retested in accordance with the ASTM standard.

Based on discussions with representatives in the electrical industry, many employers and agencies are al-

ready in compliance with existing Title 8 provisions that require them to follow the manufacturer's instructions to electrically retest all classes of rubber insulating gloves. For employers or agencies that are not currently electrically testing their lower voltage rated gloves (e.g. class 00 and 0 gloves) the proposal would clarify that obligation within the Low Voltage Electrical Safety Orders. For those employers, the average cost to electrically test the gloves by a third party certified laboratory is approximately \$16 for each pair of gloves plus a shipping fee. Additionally, employers that would not have an extra pair of gloves available during the test period would need to purchase an extra pair. The 00 and the 0 class rubber gloves can be purchased for approximately \$35 to \$55 per pair, respectively, and the outer low voltage leather protector gloves (worn over the rubber insulating glove) cost approximately \$15 to \$20 per pair. The employer also has the option to purchase new gloves at the end of six months in lieu of electrically retesting the gloves.

Current Federal OSHA standards in 29 CFR 1910.137 "Electrical Protective Equipment", Tables I-5 and I-6, already require electrical testing of rubber insulating gloves. Federal OSHA standards in 29 CFR 1910.137, Table I-5 starts with the 0 class glove and does not address the 00 class glove. Board staff believes that the development of Federal OSHA's existing Tables I-5 and I-6 preceded the development and availability of the 00 class glove from glove manufacturers. However, Board staff has learned that Federal OSHA is proposing amendments outlined in the Federal Register dated June 15, 2005, 29 CFR Parts 1910 and 1926, Proposed Rule for Electric Power Generation, Transmission, and Distribution; Electrical Protective Equipment that will reference the 00 class glove in Table I-5. Consequently that will clarify that the 00 class glove also requires electrical testing as outlined in Table I-6.

Finally, a proposed exception to Section 2320.2(a)(3) would provide clarity and relief for the employer by establishing that suitable protective equipment, such as approved insulating gloves or insulated tools are not required when working on exposed parts of electrical equipment or systems energized at less than 50 volts.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action. The proposal does not impose new requirements upon State agencies. See the rationale under the heading, "Specific Technology or Equipment."

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made an initial determination that this proposal will not result in a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. Also, see the rationale under the heading, "Specific Technology or Equipment."

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. Also, see the rationale under the heading, "Specific Technology or Equipment."

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under "Determination of Mandate."

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standard does not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, this standard does not constitute a "new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

The California Supreme Court has established that a "program" within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d.46.)

This proposed standard does not require local agencies to carry out the governmental function of providing

services to the public. Rather, this standard requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, this proposed standard does not in any way require local agencies to administer the California Occupational Safety and Health program. (See *City of Anaheim v. State of California* (1987) 189 Cal.App.3d 1478.)

This proposed standard does not impose unique requirements on local governments. All employers — state, local and private will be required to comply with the prescribed standards.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments would clarify for small businesses (e.g. primarily electrical contractors) that rubber insulating gloves must be tested in accordance with the provisions of the ASTM F 496–02a consensus standard. However, no economic impact is anticipated because the proposal clarifies existing requirements as explained under the heading “Specific Technology or Equipment.” Further, based on discussions with electrical contractors, the vast majority of electrical work is performed on electrical parts of equipment or systems that are not energized and thus would not be subject to the provisions contained in Section 2320.2 for work while equipment or systems are energized.

ASSESSMENT

The adoption of the proposed amendments to this standard will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

REASONABLE ALTERNATIVES CONSIDERED

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

2. **TITLE 8: ELEVATOR SAFETY ORDERS**
Chapter 4, Subchapter 6
Sections 3000, 3001, 3009, 3094.2, 3120.6, and 3137
New Sections 3140, 3141, 3141.1 through 3141.13, 3142, 3142.1, 3142.2, 3143, 3144, 3145, and 3146
Revisions to the Elevator Safety Orders

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

Unsafe and defective conveyances present the probability of serious accidents resulting in injury to the public and to employees. The best interest of the State of California is served if these injuries are prevented by providing protection to employees and public users of these conveyances.

Section 7323 of the Labor Code specifically requires the Division of Occupational Safety and Health (Division) to propose to the Occupational Safety and Health Standards Board (Board) for review and adoption, provisions at least as effective as the American Society of Mechanical Engineers (ASME) A17.1, ASME A17.3, ASME 18.1, and the American Society of Civil Engineers (ASCE) 21.

This proposal updates by reference, provisions of ASME A17.1–2004, ASME 18.1–2003, and the ASCE 21, Parts 1 (1996), 2 (1998), and 3 (2000). These technical documents are derived from the conveyance industry and contain the industries’ most recent consensus conveyance standards. These proposed standards, when adopted, will establish minimum requirements for persons installing, operating, maintaining, and inspecting conveyances installed after a specified effective date to be determined by the Office of Administrative Law following adoption of this proposal. The proposed standards will provide for the safe operation and maintenance of conveyances for the protection of employees and the general public.

The Division reviewed ASME A17.3 which is addressed in Labor Code sections 7300 and 7323 and concluded that the elevator safety orders in Title 8 are at least as effective as, or more stringent than, the provisions of ASME A17.3. Therefore, the Division believes adoption of ASME A17.3 is not necessary.

The proposed standards contained in the referenced documents creates a new group, Group IV, with some exemptions and amendments to conveyances installed after a specified effective date to be determined by the Office of Administrative Law following adoption of this proposal.

This proposal also includes amendments to Group I standards to provide that general administrative requirements that apply to existing elevator installations in Group II and Group III standards also apply to new Group IV conveyances, if appropriate. In addition, other amendments are proposed for existing Group II and Group III standards to provide consistency and clarity for existing standards that apply to existing elevators.

Any references to Title 24 in the text are proposed for deletion. Prior to September 30, 2002, the Board was mandated by Health and Safety Code Section 18943(b) to submit Title 8 building standards to the California Building Standards Commission for their approval and adoption into Title 24, the California Building Code. Assembly Bill 3000 (Stats. 2002, c. 1124) repealed Labor Code Section 142.6 and Health and Safety Code Section 18943(b), thus exempting the Board from the building standard requirements contained in those statutes.

This proposed rulemaking action also includes non-substantive revisions such as editorial, grammatical, and re-formatting. These non-substantive revisions are not all discussed in this informative digest but are clearly indicated in the regulatory text in underline and strikeout format. In addition to these non-substantive revisions, the following actions are proposed:

Subchapter 6. Elevator Safety Orders

Group I. Administrative Regulations

The existing wording under the heading “Group I. Administrative Regulations” states that Group I regulations apply to existing and new elevator installations.

The proposal amends this language to provide that Group I standards apply to existing elevator installations covered in Group II and Group III standards, and to new conveyances covered in Group IV standards.

The effect of this proposal on the regulated public would be that the Group I administrative standards would apply to existing elevators installed on or prior to certain dates covered by Group II and Group III standards, and to new conveyances covered by Group IV standards, installed on or after the effective date of this standard.

Article 1. Application

Section 3000. Application

Subsection (c). Devices Included

Existing section 3000(c) consists of subsections (c)(1) through (c)(14), and indicates that devices covered by the Elevator Safety Orders are included under the term “elevator” as used in the Labor Code. The elevators are identified by the type of elevator device, and are indicated by the article(s) in the Elevator Safety Orders that are applicable to the type of elevator. The ele-

vators are also categorized as either “existing” or “new” conveyances.

The proposal editorially revises the existing language of subsections (c)(1) through (c)(14) by, among other editorial revisions, deleting the terms “existing” and “new”.

The effect of this proposal on the regulated public is that all elevators in subsection (c) are implied to be existing elevators, covered by standards in the applicable indicated article(s) for each elevator type; thereby, rendering the terms “new” and “existing” obsolete.

The proposal also adds new subsection (c)(15) that provides for special-purpose personnel elevators covered by regulations of Article 12.3 and for special-purpose elevators covered by regulations of Article 32.

Proposed subsection (c) includes both special-purpose personnel elevators and special-purpose elevators that are already covered by the standards in the articles indicated, but were inadvertently not listed in subsection (c).

Therefore, the effect of this proposal is to ensure that the regulated public is aware that these two special-types of elevators are covered by proposed subsection (c).

Subsection (f). New Installations

Existing section 3000(f) consists of subsections (f)(1) through (f)(3). The existing heading of subsection (f) reads “New Installations.”

It is proposed to delete the term “New” and in its place include the term “Group III” in the heading of subsection (f) to read as “Group III Installations.”

The effect of this proposal on the regulated public is that the term “New” will no longer be consistent with Group III standards. Elevators in Group III become existing elevators with a date of installation on or after October 25, 1998, but before the effective date of the adoption of this proposal.

Existing subsection (f) identifies new installations, summarily described, as devices listed in subsection (c) that are erected after the effective date of the existing standards; existing elevators that have been operating previous to the adoption of the existing standards; and existing elevators that are moved to a new location after the effective date of the existing standards. In addition, existing subsection (f) contains a “NOTE” that indicates standards for new installations are contained in Group III.

The proposal deletes references to “new installations” and “new devices” in existing subsection (f) and provides specific dates for the applicability of Group III standards. In addition, it is proposed to revise the “NOTE” in existing subsection (f), to delete the term “new,” to include the phrase “Group III” to follow the

phrase "Regulations for," and to delete the term "contained."

The effect of this proposal on the regulated public is that elevator installations covered in Group III are now proposed to be identified as existing elevators installed on or after October 25, 1998, but before the effective date of this standard, thereby, rendering the term "new" obsolete. After the effective date of this proposal, both Group II and Group III standards would apply to existing elevators with the dates of installations differentiating the two groups.

Subsection (g). Existing Installations

Existing section 3000(g) consists of subsections (g)(1) through (g)(3). The existing heading of subsection (g) reads "Existing Installations."

It is proposed to delete the term "Existing" and in its place use the term "Group II" in the heading of subsection (g) to read as "Group II Installations".

The effect of this proposal on the regulated public is that Group II standards would not be defined only by the term "existing" because after the effective date of these proposed standards, both Group II and Group III standards would apply to existing elevators. The difference between the Group II and Group III existing elevators would be the different installation dates that are specified in the proposed new Group II and Group III headings.

Existing subsection (g) identifies existing installations, summarily described, as devices listed in subsection (c); devices inspected by the Division with an assigned serial number; devices for which erection began before the existing standards became effective; and devices erected from plans or contracts completed and which notice of intent to install is filed with the Division before the existing standards became effective. In addition, existing subsection (g) contains a "NOTE" that indicates standards for existing installations are contained in Group II.

The proposal deletes references to "existing installations" and "existing devices" in subsection (g) and provides specific dates for the applicability of Group II standards. In addition, it is proposed to revise the "NOTE" in existing subsection (g) to delete the term "existing" and to include the phrase "Group II" to follow the phrase "Regulations for."

The effect of this proposal on the regulated public is that elevator installations covered in Group II are now proposed to be identified as elevators installed before October 25, 1998; thereby, rendering the term "existing" obsolete.

Subsection (h). Alterations, Repairs, Replacements, and Maintenance of Devices

Existing subsection (h) specifies that alterations, repairs, replacements, and maintenance of devices as specified in section 3000(c) shall comply with Part XII of ASME A17.1-1996, which is incorporated by reference, except for certain rules and sections.

The proposal revises the numbering system in existing subsection (h) to include a new subsection number "(h)(1)" prior to the existing language following the heading of subsection (h).

This proposal will have no regulatory effect upon the regulated public as it editorially reformats existing language.

In addition, this proposal adds new subsection (h)(2) that provides for alterations made on Group II and Group III devices after the effective date of this standard [OAL to insert the effective date of the standard].

The effect of this proposal on the regulated public will be that alterations made on Group II and Group III devices, after the effective date of this standard, must comply with the requirements of section 3141.2 of Group IV standards which requires adherence to specific portions of ASME A17.1-2004.

Article 2. Permit to Operate

Section 3001. Permit to Operate

Subsection (a)(8)

Existing section 3001(a)(8) provides that the person or firm installing static controls shall provide the Division with information that the control complies with the requirements of Group II, section 3040(f)(4) and (f)(7). The information shall consist of certain diagrams of the control and safety circuit, or certain checkout procedure and demonstration of certain control circuits as required by section 3040(f)(4) and (f)(7).

The proposal adds an "EXCEPTION" to section 3001(a)(8) that provides that installation of static control for Group IV installations shall comply with Group IV, section 3141.3.

The effect of this proposal on the regulated public will be that the requirements of section 3001(a)(8) apply only to Group II and Group III installations. Group IV installations must comply with Group IV, section 3141.3.

Subsection (b). Inspections Required

Existing section 3001(b) provides for inspection of each new device, each alteration, replacement of certain equipment such as door locking devices, safety devices, governors, oil buffers, counterweights, car enclosures and car doors and gates, terminal stopping devices, operating devices and control equipment, controllers, and emergency and signaling devices. It also provides for re-inspection of devices, inspection of elevators in certain multiunit residential buildings, and inspection of special access elevators.

The proposal replaces the terms "passenger or freight elevator" with the term "device" in subsection (b)(2) to be consistent with terminology already used in pro-

posed section 3000(c) that utilizes the term “devices” to collectively include all elevator types listed in proposed subsections (c)(1) through (c)(15). Therefore, this proposal will have no effect on the regulated public.

Article 6. Definitions

Section 3009. Definitions

Existing section 3009 of Article 6 contains the definitions of terms used in the Elevator Safety Orders.

This proposal defines several new terms including: Automated People Mover; Certified Competent Conveyance Inspector (CCCI); Certified Competent Conveyance Mechanic (CCCM); Certified Qualified Conveyance Company (CQCC); Certified Qualified Conveyance Inspection Company (CQCIC); Conveyance; Dormant Elevator, Dumbwaiter, or Escalator; Periodic Inspection; and Re-inspection.

This proposal also makes non-substantive changes to the definition of the term “Speed Governor” for clarity purposes.

The effect of this proposal on the regulated public is to provide clarity to the elevator standards by including definitions of terms used throughout the Elevator Safety Orders.

Group II. Existing Elevator Installations

The existing heading of Group II reads “Existing Elevator Installations.”

The proposal amends the title of Group II from “Existing Elevator Installations” to include an introductory sentence that states “Elevator installations for which the installation contract was signed before October 25, 1998.” The proposal also deletes the existing language that states “Group II regulations apply to existing elevators installed prior to October 25, 1998.”

The effect of this proposal on the regulated public is to provide clarity to the scope of Group II standards that specifically apply to existing elevators for which the installation contract was signed before October 25, 1998, and that standards in Group II apply.

Article 15. Special Access Conveyances and Special Access Lifts

Section 3094.2. Vertical Platform (Wheelchair) Lifts

Existing section 3094.2 provides platform dimensions and platform door location for vertical platform wheelchair lifts which require the wheelchair or conveyance to be rotated 90 degrees for egress.

Existing subsection (p)(1) states that the platform inside dimensions may range from 42 inches to 50 inches on one side by 53 inches to 60 inches on the other side.

The proposal amends subsection (p)(1) to read “The clear inside unobstructed platform dimensions may

range from 42 inches to 48 inches on one side by 54 inches to 60 inches on the other side.”

Existing subsection (p)(2) states that where there is an increase in the minimum width of 42 inches, the maximum 60 inch length shall be reduced by the number of inches the width has been increased.

The proposal amends subsection (p)(2) to read “When the platform minimum width of 42 inches is increased, the platform maximum 60 inch length shall be decreased by the number of inches the width has been increased (see the Table in section 3093.46(b)).”

The effect of this proposal on the regulated public is that the various dimensions specified in proposed subsections (p)(1) and (p)(2) are to provide clear unobstructed platform space inside the platform and to specify the varying relationship between the width and length dimensions of the platform.

Group III. New Elevator Installations

The existing heading of Group III reads “New Elevator Installations.”

This proposal amends the title of Group III to include an introductory sentence that states “Elevator installations for which the installation contract was signed on or after October 25, 1998 but before [OAL to insert the effective date of the standard].” This proposal also deletes the existing language that states “Group III regulations apply to new elevators installed after October 25, 1998.”

The effect of this proposal on the regulated public is to provide clarity to the scope of Group III standards that specifically apply to elevators with an installation date on or after a certain date, and before a certain date, and that standards in Group III apply.

Article 20. Hoistways, Hoistway Enclosures, and Related Construction for Electric Elevators

Section 3120.6. Pits

Existing section 3120.6 contains requirements pertaining to pits. Existing subsection (c) indicates that a water removal system such as a sump pump, suction drain, or gravity drain may be used to address water accumulations on the pit floor as it relates to section 1206.2a of ASTM A17.1–1996.

An editorial revision is proposed to replace the term “section” with the term “Rule” as the appropriate reference to ASME standards. In addition, an editorial revision is proposed to correct “ASTM” A17.1–1996 to read “ASME” A17.1–1996, which is the appropriate ASME standard.

This proposal will have no effect on the regulated public as it corrects inadvertent references by identifying the appropriate terminology and the appropriate ASME standard.

Article 37. Seismic Requirements for Elevators, Escalators and Moving Walks

The existing title of Article 37 reads “Seismic Requirements for Elevators, Escalators and Moving Walks.”

It is proposed to amend the title of existing Article 37 to read “Seismic Requirements” to provide a general heading for this article.

It should be noted that the title of existing section 3137 already reads “Seismic Requirements for Elevators, Escalators and Moving Walks,” and therefore, this proposal will have no effect on the regulated public.

Section 3137. Seismic Requirements for Elevators, Escalators and Moving Walks

Existing section 3137 contains seismic requirements for elevators, escalators, and moving walks. Existing subsection (d) outlines specific requirements for escalators and moving walks. Existing subsection (d)(2)(C) states that seismic restraint shall be provided in the transverse direction at all supports and that the gap between the escalator truss and the seismic restraint shall not exceed 1/4 inch on each side.

Amendments are proposed to existing subsection (d)(2)(C) to read “Seismic restraint shall be provided in the transverse direction at the top and bottom supports.” It is also proposed to add a requirement that reads “Intermediate supports, if any, shall be free to move laterally in all directions.”

The effect of this proposal on the regulated public is that certain structural supports are required at the top and bottom supports for structural protection during earthquakes, and will provide that intermediate supports, if provided, must be designed to move freely in a lateral fashion during seismic activity.

New Group IV. Conveyance Installations for Which the Installation Contract was Signed On or After [OAL to insert the effective date of the standard]

The proposal adds a new group heading to read “Group IV. Conveyance Installations for Which the Installation Contract was Signed On or After [OAL to insert the effective date of the standard].”

The effect of this proposal on the regulated public is that conveyances, for which the installation contract was signed on or after the effective date of this standard, will comply with Group IV standards.

New Article 40. Application

The proposal adds a new Article 40 titled “Application.”

The effect of this proposal on the regulated public is to designate a new article for the subsequent applicable sections of Group IV standards.

New Section 3140. Application

The proposal adds a new section 3140 titled “Application” consisting of new subsections (a) and (b).

Proposed new subsection (a) specifies that Group IV governs the design, erection, construction, installation, service, and operation of conveyances installed after the effective date of this standard as defined in Section 7300.1 of the Labor Code.

The effect of this proposal on the regulated public is that conveyances defined in the referenced parts of the California Labor Code, installed after the effective date of this standard, must comply with the design, erection, construction, installation, service, and operation standards in proposed new Group IV.

Proposed new subsection (b) states the titles and editions of standards referenced in these Orders. New subsection (b) also indicates that the standards in the Elevator Safety Orders have precedence if differences exist between the referenced standards and the standards in the Elevator Safety Orders.

The effect of this proposal on the regulated public is that this proposal provides the publications, titles, and editions of the referenced standards cited in the proposed Group IV standards. This proposal also establishes precedence between the referenced standards and the standards in the Elevator Safety Orders if differences exist.

New Article 41. Conveyances Covered by ASME A17.1–2004

The proposal adds new Article 41 titled “Conveyances Covered by ASME A17.1–2004.”

The effect of this proposal on the regulated public is that standards for conveyance in ASME A17.1–2004, Safety Code for Elevator and Escalators, will be stated in the proposed new sections of Article 41.

New Section 3141. Scope

The proposal adds new section 3141 that states conveyances covered by ASME A17.1–2004, section 1.1, shall comply with ASME A17.1–2004, Safety Code for Elevator and Escalators, except for certain sections indicated. This proposal also incorporates by reference ASME A17.1–2004.

The effect of this proposal on the regulated public is that conveyances covered by ASTM A17.1–2004, section 1.1, and installed on or after the effective date of this standard, must comply with the ASME standard for Safety Code for Conveyances and Escalators, except for certain sections indicated.

New Section 3141.1. Maintenance, Repair, and Replacement

The proposal adds new section 3141.1 that requires the maintenance, repair, and replacement of conveyances shall comply with section 8.6 of ASME

A17.1–2004, and incorporates by reference this section.

The effect of this proposal on the regulated public is that maintenance, repair, and replacement of conveyances must comply with ASME A17.1–2004, section 8.6.

New Section 3141.2. Alterations

The proposal adds new section 3141.2(a) that provides provisions for alterations made to conveyances and that these provisions comply with section 8.7 of ASME A17.1–2004, and incorporates by reference this section.

The effect of this proposal on the regulated public will allow for alterations to be made to conveyances but must comply with ASME A17.1–2004, section 8.7.

Proposed new subsection (b) provides that alterations concerning safety requirements for seismic risks shall comply with ASME A17.1–2004, section 8.4. Proposed new subsection (b)(1) provides that alterations on controllers, change of motion controllers, and change in type of operation control shall comply with ASME A17.1–2004, section 8.4.10. This proposal incorporates by reference these sections in ASME A17.1–2004.

The effect of this proposal on the regulated public is that alterations on conveyances must comply with ASME A17.1–2004, section 8.7. Alterations concerning safety requirements for seismic risks must comply with ASME A17.1–2004, section 8.4. Alterations on controllers, change of motion controllers, and change in type of operation control, must comply with ASME A17.1–2004, section 8.4.10.

New Section 3141.3. Static Controls

The proposal adds new section 3141.3 that pertains to static controls specified in ASME A17.1–2004, which is incorporated by reference.

Proposed new subsection (a) requires that installation of static controls shall comply with ASME A17.1–2004 requirements applicable to the conveyance involved. Proposed new subsection (b) requires the company that installs the static controls shall provide verification to the Division that the controls comply with ASME A17.1–2004. Proposed new subsection (c) requires that the results of the Electromagnetic Interference testing required by ASME A17.1–2004 be submitted to the Division for review and that the test include any wireless communication system used.

The effect of this proposal on the regulated public is that static control installations must be consistent with the requirements of ASME A17.1–2004, specific to the conveyance involved. Furthermore, the company installing the static controls must be a Certified Qualified Conveyance Company (CQCC) and that the CQCC shall provide the Division verification that the control complies with the requirements of ASME A17.1–2004.

The verification must include information such as electrical schematic diagrams or block diagrams of the control and safety circuits; written check-off procedure and demonstration of safety and speed control circuits at the time of the initial inspection; and the results of the Electromagnetic Interference (EMI) testing, including any wireless communication system used.

New Section 3141.4. Acceptance Inspections and Tests

The proposal adds new section 3141.4(a) that specifies acceptance inspections and tests shall comply with the parts of section 8.10 of ASME A17.1–2004 that are applicable to the type of conveyance installed or altered, and incorporates by reference this section.

The effect of this proposal on the regulated public is that newly installed or altered conveyance installations must comply with acceptance inspections and tests applicable to the type of conveyance installation.

Proposed new subsection (b) provides that private residential conveyances installed, or that have undergone major alterations, located in multiunit residential buildings serving no more than two dwelling units and not accessible to the public, shall be inspected for safety and compliance with the applicable provisions in ASME A17.1–2004, sections 5.3 and 5.4, in addition to the acceptance inspections and tests specified in section 3141.4(a).

The effect of this proposal on the regulated public is that private residential conveyances installed, or undergone major alterations, located in certain multiunit residential buildings are required to be inspected for safety and compliance with certain provisions of ASME A17.1–2004, in addition to inspections and tests specified in section 3141.4(a).

New Section 3141.5. Periodic Inspections

The proposal adds new section 3141.5 that states conveyances covered by ASME A17.1–2004 shall comply with the periodic inspection requirements in parts of section 8.11 of ASME A17.1–2004 that apply to the type of conveyance involved, and incorporates by reference this section.

The effect of this proposal on the regulated public is that the items specified in section 8.11 of ASME A17.1–2004 must be inspected periodically.

In addition, proposed Section 3141.5 contains an “EXCEPTION” statement that certain types of private residential conveyances specified in new Section 3141.4(b) are not subject to periodic inspections.

The effect of this proposal on the regulated public is that certain types of private residential conveyances are not required to have periodic inspections.

New Section 3141.6. Periodic Tests

The proposal adds new section 3141.6 that provides for periodic tests for conveyances covered by ASME

A17.1–2004, which incorporates by reference those applicable sections, and consists of subsections (a) through (f).

Proposed new subsection (a) indicates periodic testing shall comply with the parts of section 8.11 of ASME A17.1–2004 for the type of conveyance involved, with the following frequencies: (1) Category One Test — completed once every 12 months and apply to earthquake protective devices; (2) Category Three Tests — completed once every 36 months; and (3) Category Five Tests — completed once every 60 months.

The effect of this proposal on the regulated public is that conveyances covered by ASME A17.1–2004 must comply with the periodic testing requirements of section 8.11 of ASME A17.1–2004. The items specified in section 8.11 of ASME A17.1–2004 must be inspected with the frequencies specified. Also, a Category One Test must apply to earthquake protective devices.

Proposed new subsection (b) states that test tags are required in accordance with section 8.11.1.6 of ASME A17.1–2004. Tags shall be installed in machinery space when machine rooms are not available.

The effect of this proposal on the regulated public is that tags with the required test data must be provided and installed in the machine room; and if a machine room is not available, the tags must be installed in the machinery space where the machinery is located.

Proposed new subsection (c) provides that the periodic tests shall be conducted by a Certified Competent Conveyance Mechanic (CCCM) employed by a Certified Qualified Conveyance Company (CQCC).

The effect of this proposal on the regulated public is that the Division will recognize and accept the tests specified, when conducted by a Certified Competent Conveyance Mechanic.

Proposed new subsection (d) indicates a Certified Competent Conveyance Inspector (CCCI) employed by a Certified Competent Conveyance Inspection Company (CCCIC), or a Division Certified Competent Conveyance Inspector, if a CQCIC is not available, shall witness the periodic tests as required by ASME A17.1–2004, section 8.11.1.1.2, and incorporates by reference this section. The periodic tests witnessed shall be reported to the Division within a certain number of days of the test. The report shall include certain information such as the name of the company that conducts the tests, the name of the inspector witnessing the test, the type of test performed, the name of the CQCC and CCCM who performed the test, and the date and results of the test.

The effect of this proposal on the regulated public is that the tests be witnessed by a Certified Competent Conveyance Inspector employed by a Certified Competent Conveyance Inspection Company, or a Division qualified inspector, if a CQCIC is not available. The in-

spector employed by the inspection company witnessing the test must provide to the Division certain information regarding the test.

Proposed new subsection (e) specifies that all statements on the form shall be made under penalty of perjury.

The effect of this proposal on the regulated public is that the information/statements submitted by the certified conveyance inspector on the inspection witnessed must be made under penalty of perjury.

Proposed new subsection (f) specifies that if a conveyance fails a periodic test, the conveyance shall be removed from service until a satisfactory test result is achieved.

The effect of this proposal on the regulated public is that a conveyance that fails a periodic test will not be allowed to remain in service. A failed conveyance may return to service when a satisfactory test result is achieved.

New Section 3141.7. General Requirements

The proposal adds new section 3141.7 that pertains to general requirements and consists of subsections (a)(1) through (a)(19), subsection (b), and an informational “NOTE.”

New Subsection (a)

Proposed new subsection (a)(1) specifies that hoistway door unlocking devices described in section 2.12.6 of ASME A17.1–2004 are prohibited on all conveyances.

The effect of this proposal on the regulated public is that hoistway unlocking devices will not be permitted at any landing where there is an entrance.

Proposed new subsection (a)(2) specifies that emergency doors in blind hoistways described in ASME A17.1–2004, section 2.11.1.1, and access panels described in ASME A17.1–2004, section 2.11.1.4, are prohibited.

The effect of this proposal on the regulated public is that conveyances installed in single blind hoistways must not be equipped with emergency doors at any of the floors. Also, access panels for cleaning transparent enclosures are not allowed.

Proposed new subsection (a)(3) specifies that all electrical equipment and wiring shall comply with the California Code of Regulations, Title 24, Part 3, California Electrical Code.

The effect of this proposal on the regulated public is that only electrical equipment and wiring that conform to the California Electrical Code will be used.

Proposed new subsection (a)(3)(A) specifies that the light switch shall be located on the strike side of the machine room door if a machine room door is provided.

The effect of this proposal on the regulated public is that the light switch must be on the side of the door

where the strike plate is installed, if a door is provided, thereby, facilitating access to the switch.

Proposed new subsection (a)(3)(B) specifies that the light switch shall be located adjacent to the elevator pit access door within 18 inches to 36 inches above the access landing when access to the conveyance pit is through the lowest landing door.

The effect of this proposal on the regulated public is that the light switch in the conveyance pit must be located in a particular location within a certain height range above the access landing if egress and ingress to the conveyance pit is through the lowest landing door, thereby, facilitating access to the switch.

Proposed new subsection (a)(3)(C) specifies that fire detecting systems for hoistways and the necessary wiring may be installed in hoistways, provided that the system is arranged to be serviced and repaired from outside the hoistway.

The effect of this proposal on the regulated public is that fire detecting systems and associated wiring may be installed and serviced in a safe and otherwise appropriate manner.

Proposed new subsection (a)(4) specifies that the 4-inch dimension referenced in ASME A17.1–2004, section 2.1.6.2, shall be reduced to 2 inches, and the 6.5 inch dimension referenced in ASME A17.1–2004; section 2.14.4.5.1(d), shall be reduced to 6 inches. This proposal proposes a more stringent requirement than the existing ASME standard to reduce the hazardous shear point distance between the stationary hoistway and the moving elevator.

The effect of this proposal on the regulated public is that the setback distance must be 2 inches, and the distance from the face of the car door or gate and the hoistway must be 6 inches on freight conveyances equipped with certain doors and not accessible to the public.

Proposed new subsection (a)(5) specifies that the means of providing automatic disconnect from the main power supply to the affected conveyance upon or prior to the application of water from sprinklers located in the machine room or in the hoistway as required by ASME A17.1–2004, section 2.8.2.3.2, is permitted, but is not mandatory.

The effect of this proposal on the regulated public is that this provision provides that a main power disconnect for the sprinklers in the machine room or hoistway to be an option, and not a requirement, as specified in section 2.8.2.3.2 of ASME A17.1–2004.

Proposed new subsection (a)(6) specifies that door locking devices, oil buffers, car and counterweight safety devices, speed governors, and plunger engaging safety devices (plunger gripper) shall be approved by the Division based on the criteria contained in ASME A17.1–2004, sections 2.12, 2.17, 2.18, 2.22.4, and

3.17.3; and Group II, sections 3105(b), 3106(b), 3106.1, 3108(f), and 3110(a).

The effect of this proposal on the regulated public is that the devices specified must be approved by the Division. The Division will base its approval on the criteria specified in the applicable sections of ASME A17.1–2004 and with the applicable sections of Group II.

Proposed new subsection (a)(7) specifies that an audible signaling device complying with ASME A17.1–2004, section 2.27.1.2, shall be provided on all conveyances regardless of the existence of an emergency stop switch.

The effect of this proposal on the regulated public is that even if an emergency stop switch is not provided, an audible signaling device must still be provided.

Proposed new subsection (a)(8) specifies that the car shall be permitted to move one floor on resumption of normal, emergency, or standby power addressed in ASME A17.1–2004, section 2.27.3.4.

The effect of this proposal on the regulated public is that the car movement to re-establish position must be limited to one floor.

Proposed new subsection (a)(9) specifies that guards, if perforated, shall reject a 1/2 inch ball addressed in ASME A17.1–2004, section 2.3.2.2(e).

The effect of this proposal on the regulated public is that if perforated metal guards are installed in the pit and/or machine room for protection on open sides of the counterweight runway, the perforations must reject a 1/2 inch ball, thereby, providing an acceptable minimum level of safety.

Proposed new subsection (a)(10) specifies that the speed governor and safety marking plates shall contain the manufacturer's identifying number.

The effect of this proposal on the regulated public is that marking plates must be marked with the manufacturer's identifying number in addition to the other data required.

Proposed new subsection (a)(11) specifies that a reduced diameter governor rope of equivalent construction and material to that required by ASME A17.1–2004 shall be permitted if the factor of safety related to the strength necessary to activate the safety is 5 or greater.

The effect of this proposal on the regulated public is that a reduced diameter governor rope is allowed provided the rope is of equivalent construction and material, and provided that the 5 safety factor or greater is maintained when the safety activates, thereby, providing an acceptable minimum level of safety.

Proposed new subsection (a)(12) specifies that scissor type collapsible gates are prohibited.

The effect of this proposal on the regulated public is that collapsible car gates are allowed provided the collapsible car gate is not scissor type.

Proposed new subsection (a)(13) specifies that the guarding of counterweights in a multiple-elevator hoistway shall comply with Group II, section 3013(c).

The effect of this proposal on the regulated public is that the counterweight must be guarded for the entire length of the hoistway with wire-mesh material.

Proposed new subsection (a)(14) specifies that water removal systems used to address the accumulation of water in pits shall comply with Group III, section 3120.6(c) and section 3120.6(d).

The effect of this proposal on the regulated public is that the pit must be provided with a water removal system such as sump pump, suction drain, or gravity drain.

Proposed new subsection (a)(15) specifies that conveyances in jails and penal institutions are exempt from the requirements related to the installation of fire fighters' emergency operation where the recall of conveyances will interfere with security.

The effect of this proposal on the regulated public is that conveyances in jails and penal institutions are exempt from the fire fighters' emergency operation where the recall of conveyances would interfere with security, thereby, allowing jails and penal institutions to maintain a necessary level of security.

Proposed new subsection (a)(16) specifies that guarding of exposed equipment shall comply with Group II, section 3014.

The effect of this proposal on the regulated public is that exposed equipment in machine rooms and machinery spaces must be guarded.

Proposed new subsection (a)(17) specifies that partitions, not less than 6 feet high from the pit floor, shall be provided between pits of adjacent hoistways, and the openings in the partition shall reject a 2-inch ball. The partitions may be omitted if the clearance between the underside of the car sling when resting on a fully compressed buffer and the bottom of the pit is not less than 7 feet.

The effect of this proposal on the regulated public is that certain partitions must be provided between pits of adjacent hoistways for protection from moving elevator cars and counterweights.

Proposed new subsection (a)(18) specifies that looped pull straps are prohibited.

The effect of this proposal on the regulated public is that looped pull straps will not be installed on doors.

Proposed new subsection (a)(19) specifies that access switches as described in ASME A17.1-2004, section 2.12.7, are required regardless of the rated speed and must be installed in the hoistway entrance frame or within 12 inches of the entrance frame and not less than 36 inches nor more than 78 inches above floor level.

The effect of this proposal on the regulated public is that access switches must be provided notwithstanding the elevator's rated speed. The access switches must be installed within a certain minimum and maximum height above floor level.

New Subsection (b). Medical Emergency Service

The proposal adds new subsection (b) that provides for medical emergency service to comply with section 3041(e), Group II.

The effect of this proposal on the regulated public is that conveyances, used for medical emergency service, must comply with the design and designation requirements in Group II, section 3041(e).

This proposal includes a "NOTE" that refers to Title 24, Chapter 30, section 3003.5a. of the California Building Code for regulations related to medical emergency service conveyances.

This proposal is informational only as it refers the regulated public to standards pertaining to medical emergency service conveyances. Therefore, this proposal will have no effect on the regulated public.

New Section 3141.8. Electric Conveyances

The proposal adds new section 3141.8 that applies to electric conveyances covered by ASME A17.1-2004, which incorporates by reference those applicable sections, and consists of subsections (a)(1) through (a)(5).

Proposed new subsections (a)(1) and (a)(1)(A) stipulate that a means of access to the governor from outside the hoistway as required by section 2.1.3.1.2(b)(1) of ASME A17.1-2004 shall not be required provided the governor can be inspected and serviced from the top of the car, and the governor can be tripped for testing from outside the hoistway. Proposed new subsection (a)(1)(B) states that the governor can be reset automatically when the car is moved in the up direction or the governor can be reset from outside the hoistway. Proposed new subsection (a)(1)(C) states that mechanical means to secure the car during governor or governor rope replacement or removal is provided and signs indicating that the car is secured before removal of the governor rope is placed in the vicinity of the governor. This proposed subsection also states that instructions in the use of this means shall be available on site for use by a CCCM. Proposed subsection (a)(1)(D) states that means to reset the governor switch, if provided, shall be located outside the hoistway. Proposed subsection (a)(1)(E) states that additional permanent lighting of not less than 5 footcandles and a switch for the lighting shall be provided in the governor area. Proposed subsection (a)(1)(F) states that written procedures for testing, servicing, maintaining, and inspecting the governor shall be developed and made available to the CQCC providing the service on the elevator and upon request to the Division.

The effect of this proposal on the regulated public is that an alternate means is available to access the governor for inspection and maintenance, provided certain equipment and mechanisms function as indicated and certain procedures are provided and utilized.

Proposed new subsection (a)(2) specifies that a floor above a hoistway per section 2.1.3.1.1 of ASME A17.1–2004 is required only if a machine room or other room that requires entry is provided above the hoistway.

The effect of this proposal on the regulated public is that a floor above the hoistway is required only if a machine room or other room that requires access is located above the hoistway.

Proposed new subsection (a)(3) specifies that a stop switch complying with section 2.26.2.5 of ASME A17.1–2004 shall be provided at a readily accessible location adjacent to the conveyance driving machine if the driving machine is located in the hoistway.

The effect of this proposal on the regulated public is that a means to readily stop the conveyance must be provided when the driving machine is in the hoistway.

Proposed new subsection (a)(4) specifies that the Division may grant a temporary experimental variance pursuant to section 6452 of the Labor Code for an alternate suspension system not meeting the specifications of ASME A17.1–2004, section 2.20, if the alternate system provides equivalent safety.

Manufacturer's documentation supporting equivalent safety shall be submitted to the Division for review and approval. The manufacturer's documentation submitted to the Division shall include, but not be limited to: Definitions of terminology used; calculations and test results supporting the equivalency of the alternate system; the material, dimensional characteristics, and mechanical properties of the various parts of the system; the life cycle criteria of the suspension means and their connections; the replacement criteria for the suspension ropes and their connections; and the allowable sheave size to be used with the suspension system.

The effect of this proposal on the regulated public is that the Division may grant a temporary experimental variance for an alternate suspension system if the documentation supporting equivalent safety and the added technical data are provided.

Proposed new subsection (a)(5) specifies that a car top emergency exit shall not be permitted on an elevator installed in a partially enclosed hoistway.

The effect of this proposal on the regulated public is that no other egress will be allowed in conveyances installed in partially enclosed hoistways.

New Section 3141.9. Limited-Use/Limited-Application Conveyances

The proposal adds new section 3141.9 that provides for limited-use/limited-application conveyances and

specifies that limited-use/limited-application conveyances covered by ASME A17.1–2004, shall comply with section 5.2 of ASME A17.1–2004, and incorporate by reference this section.

The effect of this proposal on the regulated public is limited-use/limited-application conveyances must comply with the standards in section 5.2 of ASME A17.1–2004.

New Section 3141.10. Conveyances Used for Construction

The proposal adds new section 3141.10 that applies to conveyances used for construction covered in section 5.10 of ASME A17.1–2004, and incorporates by reference this section.

Proposed new subsection (a) specifies that conveyances used for construction covered in ASME A17.1–2004 shall comply with section 5.10 of ASME A17.1–2004, which incorporates by reference this section, and consists of proposed subsections (a)(1) through (a)(8).

The effect of this proposal on the regulated public is that conveyances used for construction must comply with standards in section 5.10 of ASME 17.1–2004 and the following proposed subsections (a)(1) through (a)(8).

Proposed new subsection (a)(1) specifies that a trained and authorized person shall be stationed at, and operate the controls in the conveyance car during the hours the conveyance is in operation. Training shall include at least conveyance operation and emergency procedures.

The effect of this proposal on the regulated public is that conveyances used for construction can only be used when operated by trained authorized persons trained on conveyance operations and emergency procedures, thereby, enhancing safety.

Proposed new subsection (a)(2) states that there shall be a means of two-way communication provided between the operator and a location on the jobsite that is staffed at all hours during conveyance operation.

The effect of this proposal on the regulated public is that communication must be available between the conveyance operator and jobsite staff during all hours the conveyance is in operation, thereby, enhancing safety.

Proposed new subsection (a)(3) specifies that there shall be a means of two-way voice communication (wired or wireless) between the conveyance operator and all hall landings. A separate communication system shall be provided at each landing and be operable during all hours of operation, i.e., an annunciator next to the operator's station in the car, which can be activated from the landings.

The effect of this proposal on the regulated public is that communications must be facilitated between the

conveyance operator and all hall landings, and conversely, a means to communicate from each landing with the conveyance operator shall be available.

Proposed new subsection (a)(4) states that an emergency plan and procedure shall be developed and made available to the Division during any inspection.

The effect of this proposal on the regulated public is that an emergency plan and procedure must be available and accessible to the Division during inspections, thereby, enhancing safety.

Proposed new subsection (a)(5) specifies that when permanent doors are installed, approved interlocks shall be provided.

The effect of this proposal on the regulated public is that permanent doors installed must be equipped with approved interlocks, thereby, enhancing safety.

Proposed subsections (a)(6) and (a)(7) indicate a durable sign with lettering not less than 1/2 inch on a contrasting background shall be conspicuously posted inside the conveyance car indicating that the conveyance is for construction use only and that the conveyance shall be operated by an authorized person only. In addition, a durable sign with the same specifications shall be posted at all landings providing instructions on how to summon the conveyance.

The effect of this proposal on the regulated public is that signs are required to be posted to inform about the operation and use of the conveyance, thereby, enhancing safety.

Proposed new subsection (a)(8) specifies that the conveyance shall be parked and secured against unauthorized access after working hours.

The effect of this proposal on the regulated public is that the conveyance must be parked and secured after working hours, thereby, enhancing safety.

New Section 3141.11. Escalators

The proposal adds new section 3141.11 that specifies escalators covered by ASME A17.1–2004 shall comply with section 6.1 of ASME A17.1–2004, which incorporates by reference this section, and shall comply with Group III, section 3126.6(b).

The effect of this proposal on the regulated public will be that the escalators must comply with section 6.1 of ASME A17.1–2004 and with section 3126.6(b) that requires the building owners or responsible parties to provide a competent person to assist the Division’s representative to gain access to the drive unit, brakes, or safety devices.

New Section 3141.12. Moving Walks

The proposal adds new section 3141.12 that states moving walks covered by ASME A17.1–2004 shall comply with section 6.2 of ASME A17.1–2004, which incorporates by reference this section, and shall comply with Group III, section 3127.6(b).

The effect of this proposal on the regulated public will be that moving walks must comply with section 6.2 of ASME A17.1–2004 and with section 3127.6(b) that requires the building owners or responsible parties to provide a competent person to assist the Division’s representative to gain access to the drive unit, brakes, or safety devices.

New Section 3141.13. Seismic Requirements

The proposal adds new section 3141.13 to include new subsection (a) that specifies conveyances covered by ASME A17.1–2004 shall comply with the seismic requirements in section 8.4 of ASME A17.1–2004, which incorporates by reference this section, and shall comply with Group III, sections 3137(a) and 3137(b).

The effect of this proposal on the regulated public will be that conveyances must comply with seismic standards in section 8.4 of ASME A17.1–2004 and that earthquake protective devices will be designed, arranged, and maintained to ensure that if any component fails, the elevator would function in a certain mode, thereby, enhancing safety. For hospital buildings, the earthquake sensing devices will activate upon excitation in a horizontal or vertical direction of not more than 0.5 g.

Proposed new subsection (b) specifies that escalators covered in ASME 17.1–2004 shall comply with the seismic requirements in Group III, section 3137(d).

The effect of this proposal on the regulated public will be that escalators covered by ASME A.17–1–2004 must comply with certain structural design requirements and be provided with certain seismic devices as specified in section 3137(d).

New Article 42. Conveyances Covered by ASME A18.1–2003

The proposal adds new Article 42 titled “Conveyances Covered by ASME A18.1–2003.”

The effect of this proposal on the regulated public is that standards for conveyances covered in ASME A18.1–2003, Safety Standard for Platform Lifts and Stairway Chairlifts, will be stated in the proposed new sections of Article 42.

New Section 3142. General Requirements

The proposal adds new section 3142 that applies to conveyances covered by ASME A18.1–2003, section 1.1, Scope, and incorporates by reference this section.

Proposed new subsection (a) specifies that conveyances covered by ASME A18.1–2003 as set forth in section 1.1, Scope, and Article 42, shall comply with ASME A18.1–2003, Safety Standard for Platform Lifts and Stairway Chairlifts.

The effect of this proposal on the regulated public is that platform lifts and stairway chairlifts must comply with the consensus standards in ASME A18.1–2003 that will become part of these safety orders.

Proposed new subsection (a)(1) indicates that Group II, sections 3094.2(r) and 3094.5 apply to platform lifts and stairway chairlifts.

The effect of this proposal on the regulated public is that platform lifts and stairway chairlifts must comply with specific locking and maintenance requirements.

Proposed new subsection (a)(2) specifies that power doors shall comply with ANSI/BHMA A156.19–1997, American National Standard for Power Assist and Low Energy Power Operated Doors, which is incorporated by reference.

The effect of this proposal on the regulated public is that power doors must comply with the referenced national consensus standards that will become part of these Orders.

Proposed new subsection (b) specifies that acceptance inspections and tests shall comply with the parts of section 10.4 of ASME A18.1–2003 that are applicable to the type of elevator installed or altered.

The effect of this proposal on the regulated public is that the acceptance inspections and tests must be conducted on platform lifts and stairway chairlifts.

Proposed new subsection (c) states that periodic inspections shall comply with the parts of section 10 of ASME A18.1–2003 for the type of elevator involved.

The effect of this proposal on the regulated public is that periodic inspections must be conducted on platform lifts and stairway chairlifts.

Proposed new subsection (d) specifies that periodic tests shall comply with section 3141.6(c), (e), and (f), and with section 10.3 of ASME A18.1–2003.

The effect of this proposal on the regulated public is that periodic tests must be conducted on platform lifts and stairway chairlifts.

Proposed new subsection (e) indicates that periodic tests shall be witnessed by a Certified Competent Conveyance Inspector (CCCI) employed by a Certified Qualified Conveyance Inspection Company (CQCIC) or, if a CCCI is not available, by a Division CCCI. Periodic tests witnessed by a CCCI shall be reported to the Division by the CCCI on a form provided by the Division, or equivalent, within 21 days of the test. The information to be reported includes the name of the CQCIC and the CCCI witnessing the test; the type of test performed; the name of the CQCIC and CCCI who performed the test; the date of the test; and the results of the test.

The effect of this proposal on the regulated public is that either a certified competent conveyance inspector or a Division inspector must witness the periodic test. Periodic tests witnessed by the certified competent conveyance inspector must be reported to the Division on a certain form provided by the Division within a certain

time frame, and the report must contain certain required information.

New Section 3142.1. Vertical Platform Lifts

The proposal adds new section 3142.1 that specifies vertical platform lifts covered by ASME A18.1–2003 shall comply with sections 2 and 5 of ASME A18.1–2003, which incorporates by reference these sections, and with Group II, sections 3094.2(d), 3094.2(e), 3094.2(g), and 3094.2(p).

The effect of this proposal on the regulated public is that vertical platform lifts must comply with sections 2 and 5 of ASME A18.1–2003, and be provided with a separate means of disconnect, certain electric strike plates and manual lowering devices, and facilitate certain rotational capabilities for the wheelchair in the platform.

New Section 3142.2. Inclined Platform Lifts

The proposal adds new section 3142.2 that specifies inclined platform lifts covered by ASME A18.1–2003 shall comply with sections 3 and 6 of ASME A18.1–2003, which incorporates by reference these sections, and with Group II, sections 3094.3(e), 3094.3(f), 3094.3(g), 3094.3(h), except 3094.3(h)(2), and with sections 3094.3(j) and 3094.3(k).

The effect of this proposal on the regulated public is that inclined platform lifts must comply with sections 3 and 6 of ASME A18.1–2003, and be provided with certain items such as folding seats, signage warning of platform movement, audio and visual devices for communication, fold-type platforms complying with certain functions, certain requirements for intermediate steps, and turning restrictions for wheelchairs.

New Article 43. Automated Guided Transit Vehicles with an Exclusive Right-of-Way

The proposal adds new Article 43 titled “Automated Guided Transit Vehicles with an Exclusive Right-of-Way.”

The effect of this proposal on the regulated public is that standards for automated guided transit vehicles with an exclusive right-of-way, will be stated in the proposed new section of Article 43.

New Section 3143. Automated People Movers

The proposal adds new section 3143 that specifies automated people movers shall comply with ASCE 21, Part 1 (96), Part 2 (98), and Part 3 (00), Automated People Mover Standards, which are incorporated by reference.

The effect of this proposal on the regulated public is that automated people mover conveyances must comply with ASCE 21, Part 1, Part 2, and Part 3, Automated People Mover Standards, which will become part of these Orders in Title 8.

New Article 44. Hand Power Man Platforms, Manlifts, and Vertical and Inclined Reciprocating Conveyors

The proposal adds new Article 44 titled “Hand Power Man Platforms, Manlifts, and Vertical and Inclined Reciprocating Conveyors.”

The effect of this proposal on the regulated public is that standards for hand power man platforms, manlifts, and vertical and inclined reciprocating conveyors, will be stated in the proposed new sections of Article 44.

New Section 3144. Hand Power Man Platforms

The proposal adds new section 3144 that specifies hand power man platforms shall comply with standards in Group II, Article 16.

The effect of this proposal on the regulated public is that hand power man platforms must comply with the appropriate standards in Article 16 of Group II.

New Section 3145. Manlift

The proposal adds new section 3145 that specifies manlifts shall comply with standards in Group II, Article 17.

The effect of this proposal on the regulated public is that manlifts must comply with the appropriate standards in Article 17 of Group II.

New Section 3146. Vertical and Inclined Reciprocating Conveyors

The proposal adds new section 3146 that specifies vertical and inclined reciprocating conveyances shall comply with standards in Article 12.5 of Group II.

The effect of this proposal on the regulated public is that vertical and inclined reciprocating conveyances must comply with the appropriate standards in Article 12.5 of Group II.

DOCUMENTS INCORPORATED
BY REFERENCE

- American Society of Mechanical Engineers (ASME) A17.1–2004, Safety Code for Elevators and Escalators.
- American Society of Mechanical Engineers (ASME) A18.1–2003, Safety Standard for Platform Lifts and Stairway Chairlifts.
- American Society of Civil Engineers (ASCE) Standards, Automated People Mover Standards—Part 1, ASCE 21–96; Part 2, ASCE 21–98; and Part 3, ASCE 21–00.
- American National Standard Institute/Builders Hardware Manufacturers Association (ANSI/BHMA) A156.19–1997 (Revision of ANSI/BHMA A156.19–1990), American National Standard for Power Assist and Low Energy Power Operated Doors.

These documents are too cumbersome or impractical to publish in Title 8. Therefore, it is proposed to incorporate the documents by reference. Copies of these documents are available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Standards Board Office located at 2520 Venture Oaks Way, Suite 350, Sacramento, California.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under “Determination of Mandate.”

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standards do not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, these standards do not constitute a “new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

The California Supreme Court has established that a “program” within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46.)

These proposed standards do not require local agencies to carry out the governmental function of providing services to the public. Rather, the standards require local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, these proposed standards do not in any way require local agencies to administer the California Occupational Safety and Health program. (See *City of Anaheim v. State of California* (1987) 189 Cal.App.3d 1478.)

These proposed standards do not impose unique requirements on local governments. All employers — state, local and private — will be required to comply with the prescribed standards.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses.

ASSESSMENT

The adoption of the proposed amendments to these standards will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

REASONABLE ALTERNATIVES CONSIDERED

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

A copy of the proposed changes in STRIKEOUT/ UNDERLINE format is available upon request made to the Occupational Safety and Health Standard Board’s Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833, (916) 274–5721. Copies will also be available at the Public Hearing.

An INITIAL STATEMENT OF REASONS containing a statement of the purpose and factual basis for the proposed actions, identification of the technical documents relied upon, and a description of any identified

alternatives has been prepared and is available upon request from the Standards Board’s Office.

Notice is also given that any interested person may present statements or arguments orally or in writing at the hearing on the proposed changes under consideration. It is requested, but not required, that written comments be submitted so that they are received no later than April 13, 2007. The official record of the rulemaking proceedings will be closed at the conclusion of the public hearing and written comments received after 5:00 p.m. on April 19, 2007, will not be considered by the Board unless the Board announces an extension of time in which to submit written comments. Written comments should be mailed to the address provided below or submitted by fax at (916) 274–5743 or e-mailed at oshsb@dir.ca.gov. The Occupational Safety and Health Standards Board may thereafter adopt the above proposal substantially as set forth without further notice.

The Occupational Safety and Health Standards Board’s rulemaking file on the proposed actions including all the information upon which the proposals are based are open to public inspection Monday through Friday, from 8:30 a.m. to 4:30 p.m. at the Standards Board’s Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833.

The full text of proposed changes, including any changes or modifications that may be made as a result of the public hearing, shall be available from the Executive Officer 15 days prior to the date on which the Standards Board adopts the proposed changes.

Inquiries concerning either the proposed administrative action or the substance of the proposed changes may be directed to Keith Umamoto, Executive Officer, or Michael Manieri, Principal Safety Engineer, at (916) 274–5721.

You can access the Board’s notice and other materials associated with this proposal on the Standards Board’s homepage/website address which is <http://www.dir.ca.gov/oshsb>. Once the Final Statement of Reasons is prepared, it may be obtained by accessing the Board’s website or by calling the telephone number listed above.

TITLE 9. CALIFORNIA DEPARTMENT OF MENTAL HEALTH

ACTION: NOTICE OF PROPOSED RULEMAKING
SUBJECT: MENTAL HEALTH SERVICES ACT (2)

PUBLIC PROCEEDINGS

Notice is hereby given that the California Department of Mental Health (DMH) proposes to adopt the regula-

tory action described below after considering all comments, objections, or recommendations regarding the proposed regulatory action.

WRITTEN COMMENT PERIOD

Any interested person, or their authorized representative, may submit comments relevant to the action described in this notice. Any written statements, arguments, or contentions must be received by the Office of Regulations, California Department of Mental Health, 1600 Ninth Street, Room 153, Sacramento, CA 95814, by 5:00 p.m. on **April 16, 2007**. It is requested but not required that written statements sent by mail or hand-delivered be submitted in triplicate.

Comments may be transmitted via facsimile 916-651-9919 or electronic mail DMH.Regulations@dmh.ca.gov and must be received before 5:00 p.m. on the last day of the public comment period. All comments, including electronic mail or facsimile transmissions, should include the author's name and U.S. Postal Service mailing address in order for DMH to provide copies of any notices for proposed changes in the regulation text on which additional comments may be solicited.

PUBLIC HEARING

DMH will hold a public hearing commencing at 1:30 PM on **April 16, 2007**, in the Auditorium at 744 P Street, Room 102, Sacramento, CA, 95814. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the Informative Digest/Policy Statement Overview. DMH requests, but does not require, that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

Reasonable accommodation or sign language interpreting services at the public hearing will be provided upon request. Such request should be made no later than 21 days prior to the close of the written comment period.

WEB SITE

This public notice, the regulation text, the initial statement of reasons, and other related documents, are available from the DMH world-wide-web site http://www.dmh.ca.gov/Admin/regulations/rulemaking_pkgs.asp.

CONTACT

Inquiries concerning the rulemaking process described in this notice may be directed to Steve Appel, Chief, Office of Regulations, by electronic mail DMH.Regulations@dmh.ca.gov, or telephone 916-654-2319. The backup contact person is Gayathri Murthy, Office of Legal Services at 916-653-2319. Inquiries concerning the substance of the rulemaking may be directed to Irene Borgfeldt at 916-654-2617.

Hearing impaired persons wishing to utilize the California Relay Service may do so at no cost. The telephone numbers for accessing this service are: 800-735-2929, if you have a TDD; or 800-735-2922, if you do not have a TDD.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

California voters approved Proposition 63 during the November 2004 General Election. Proposition 63, now known as the Mental Health Services Act (the Act), became effective on January 1, 2005. The Act is intended to expand mental health services to children/youth, adults and older adults who have severe mental illnesses/severe mental disorders and whose service needs are not being met through other funding sources. The Act seeks to establish prevention and early intervention programs as well as to develop innovative programs. Through imposition of a 1% tax on personal income in excess of \$1 million, the Act provides the opportunity for DMH to provide increased funding, personnel and other resources to support county mental health programs and monitor progress toward statewide goals for children/youth, adults, older adults and families.

The Act directs the county mental health programs to develop and submit a Three-Year Program and Expenditure Plan (Plan) to DMH. The Plan is comprised of five broad components of activities and/or services for which the funding established under the Act can be spent. The components are Community Services and Supports for children, transition-age youth, adults and older adults; Capital Facilities and Technological Needs; Education and Training; Prevention and Early Intervention; and Innovative Programs.

The Act also requires DMH to establish requirements for each component of the Plan. However, clarification of criteria and expansion of program categories within the components are needed to ensure a standardized implementation of the Act by each of the 58 counties within California.

The standardization is being accomplished through the development of regulations whereby the criteria to access funding for each component is delineated. How-

ever, given the scale of each component, DMH is implementing each component on a sequential basis and is promulgating regulations accordingly. To this end, Title 9 of the California Code of Regulations (CCR), Chapter 14, is being reserved for the mental health services and supports provisions as provided in the Act.

Title 9, of the CCR, Chapter 14, Articles 1 through 4, were filed with the Office of Administrative Law (OAL) on December 31, 2005. These articles were filed pursuant to Welfare and Institutions Code Section 5898 (added with passage of the Act), which deems these regulations necessary for the immediate preservation of the public peace, health and safety, or general welfare, and therefore, were filed as emergency regulations and not subject to review and approval by OAL nor subject to automatic repeal until final regulations take effect. These regulations were necessarily brief and cursory, concentrating on issues related to funding in order to facilitate timely distribution of MHSA funds to the counties to allow them to initiate service delivery under the Community Services and Supports component of the act.

Soon after those regulations were adopted, it was determined that, due to a typographical error, a significant section of text had been inadvertently omitted from the regulations, and the regulations were subsequently amended to re-insert this language and were readopted on May 24, 2006 and again on September 25, 2006.

In December 2006 this original package of MHSA regulations was repealed in its entirety. In its place a new rulemaking package has been adopted, effective December 29, 2006 and is now in effect. These regulations expand on Title 9, Chapter 14, Articles 1 through 4 and add Article 5, Reporting Requirements and Article 6, Community Services and Supports.

As DMH implements each component of the Plan, it will file additional regulations with the OAL.

AUTHORITY

Section 5898, Welfare and Institutions Code.

REFERENCE

Sections 11010.5 and 11010.5(a), Government Code; and Sections 4001(a), 5345, 5600.2, 5600.2(d), 5600.3(b) and (b)(4), 5600.3(c), 5610, 5610(a) and (d)(1), 5612(a)–(b), 5613(a), 5664(a), 5681(b), 5689.2, 5714(f), 5801, 5801(b), (b)(6)–(7) and (10)–(11), 5802, 5802(a)(1) and (4) and (d)(4), 5804(c) and (d), 5806, 5806(a)(2)–(3) and (b)–(d), 5813, 5813(a), 5813.5, 5813.5(a), (c), (d), (d)(2)–(4) and (f), 5814(a)(1)–(2), (4)(A), (b), (d) and (f)(2), 5814.5, 5814.5(b)(1) and (c), 5822(h), 5830, 5830(a)(1)–(4), 5840, 5840(a) and

(b)(1)–(2), 5846, 5847, 5847(a), (a)(2)–(3) and (c)–(e), 5848, 5848(a)–(c), 5850, 5851, 5851(c)(3), 5852, 5860(b), 5866, 5868, 5868(b) and (b)(2)–(4), 5878(b), 5878.1, 5878.1(a), 5878.2, 5878.3, 5878.3(a), 5890(a) and (c), 5891, 5892, 5892(a)(4)–(5), (c) and (f)–(g), 5897(a)–(b) and (e), 5898, and 5699.4, Welfare and Institutions Code; and Sections 2(b), (c), (e) and (f), 3, 3(a), (c) and (e), MHSA, Proposition 63, November 2004 California General Election; and Title VI of the Civil Rights Act of 1964, 42 U.S.C. Section 2000d, *et seq.*

MATERIALS RELIED UPON IN PROMULGATING THIS RULEMAKING

1. Mental Health Services Act
2. DMH Letter Number 05–08: Fiscal Year 2004–05 Funding Required to be used for Mental Health Services under the Mental Health Services Act.
 - a. Enclosure 1 — Resources Required to be used for Mental Health Services under the Mental Health Services Act
 - b. Enclosure 2 — County Operations North & South Regional Listings
3. Excerpts from *A Guide to the Project Management Body of Knowledge, Third Edition (PMBOK® Guide)—an American National Standard ANSI/PMI 99–001–2004*

FISCAL IMPACT ESTIMATE

- A. **Fiscal Effect on Local Government:** Proposition 63, which expands mental health services, was passed by the voters in November 2004. Counties may choose to participate in the program; it is not a mandated program. If a county chooses to participate in these programs, the State will provide funding to the county based on its approved Three-Year Program and Expenditure Plan. For fiscal year 2006–07, approximately \$398,300,000 in the Mental Health Services Fund is estimated to be expended for Community Services and Supports.
- B. **Fiscal Effect on State Government:** Expenditures authorized in the MHSA Fund.
- C. **Fiscal Effect on Federal Funding of State Programs:** None.
- D. **Fiscal Effect on Private Persons or Businesses Directly Affected:** The Agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- E. **Effect on Housing Costs:** None

DETERMINATIONS

DMH has determined that the proposed regulatory action imposes mandates on county government when County Mental Health Programs apply for funds pursuant to these regulations. However, funds are available through the Mental Health Services Fund created by the Mental Health Services Act and codified in Welfare and Institutions Code, Section 5890 to finance the mandates as required by Part 7(commencing with Section 17500) of Division 4 of the Government Code.

DMH has determined that the regulations would not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

DMH has determined that the regulations would not significantly affect the following:

1. The creation or elimination of jobs within the State of California.
2. The creation of new businesses or the elimination of existing businesses within the State of California.
3. The expansion of businesses currently doing business within the State of California.
4. DMH has determined that these regulations would not affect small businesses because they only impact local county government when applying for funds associated with the Mental Health Services Act.

AVAILABILITY OF STATEMENT OF REASONS AND REGULATION TEXT

DMH prepared and has available for public review an initial statement of reasons for the regulations, all the information upon which the regulations are based, and the text of the regulations. These documents are posted on the DMH web site. A copy of the initial statement of reasons and the text of the regulations are available upon request to the Office of Regulations at the address noted above. This address will be the location of public records, including reports, documentation, and other material related to the regulations. In addition, a copy of the final statement of reasons (when prepared) will be available upon request from the Office of Regulations or from the DMH web site.

AVAILABILITY OF THE CHANGED OR MODIFIED REGULATION TEXT

After considering all timely and relevant comments received, DMH may adopt the regulations substantially

as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the modified text, with changes clearly indicated, shall be made available to the public for at least 15 days prior to the date on which DMH adopts the regulations. Any modifications will also be posted on the DMH web site. Requests for copies of any modified regulations should be directed to Steve Appel, Office of Regulations, at the address indicated above.

ADDITIONAL STATEMENTS AND COMMENTS

In accordance with Government Code Section 11346.5(a)(13), DMH must determine that no reasonable alternative considered by the DMH, or that has been otherwise identified and brought to the attention of DMH, would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed regulations.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations during the written comment period.

TITLE 11. COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING

NOTICE OF PROPOSED REGULATORY ACTION

Regulations 1005, 1007, 1008; Procedure D-1; Training Specifications for Peace Officer Basic Courses — Effective July 1, 2007

Notice is hereby given that the Commission on Peace Officer Standards and Training (POST) proposes to amend regulations in Chapter 2 of Title 11 of the California Code of Regulations. This proposal is made pursuant to the authority vested by Penal Code § 13503 (powers of the Commission on POST) and § 13506 (Commission on POST authority to adopt regulations). Implementation of this proposal will interpret, implement, and make specific Penal Code §13503(e) (Commission on POST authority to develop and implement programs to increase the effectiveness of law enforcement, including programs involving training and education courses).

Public Comments Due by April 16, 2007

The Commission requests written comments on the proposed actions. POST must receive the written comments no later than 5:00 p.m. on April 16, 2007. Please send any written comments to Hal Snow, Interim Executive Director, at the Commission on POST, 1601 Alhambra Boulevard, Sacramento, CA, 95816-7083, or by fax at 916.227.2801.

A public hearing is not scheduled. Pursuant to Government Code §11346.8, any interested person, or his/her duly authorized representative, may request a public hearing. POST must receive the written request no later than 15 days prior to the close of the public comment period.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The amendments are proposed by POST staff, Subject Matter Experts (SMEs) and a Standing Alignment Committee (SAC) convened by the POST Basic Training Bureau. All changes to academy curriculum begin with recommendations from law enforcement practitioners or, in some cases via legislative mandates. POST then facilitates meetings attended by curriculum advisors and subject matter experts (SMEs) who provide recommended changes to existing academy curriculum. These recommendations are then submitted to the Standing Alignment Committee (SAC), chaired by non-POST personnel and comprised of academy directors and coordinators. The SAC approved recommendations are then submitted for review by all academies at the quarterly Basic Course Consortium meetings facilitated by POST. The Consortium approved the proposed changes at its June 14, 2006 meeting. The Commission approved the proposed changes at its January 25, 2007, Commission meeting, subject to the Notice of Proposed Regulatory Action process.

The proposed changes will affect the following learning domains (LDs):

- #1, *Leadership, Professionalism & Ethics*
- #6, *Property Crimes*
- #7, *Crimes against Persons*
- #12, *Controlled Substances*
- #13, *ABC Law*
- #17, *Presentation of Evidence*
- #24, *Handling Disputes/Crowd Control*
- #28, *Traffic Enforcement*
- #30, *Preliminary Investigation*
- #40, *Weapons Violation*
- #41, *Hazardous Materials*
- #43, *Emergency Management*

At the July 2006, State Law Enforcement Training Managers Association (LETMA) meeting, staff received comments from the field that requested modifications to the Specialized Investigator's Basic Course (SIBC) Learning Domains (LDs). These LDs were outdated, and the content had not been update since January 2001. In January 2004, the verbs were incorporated, but the curriculum had not been reviewed or modified. A committee of SMEs, and SIBC presenters were brought together to review and update the curriculum.

The review process included the removal of redundancies between LDs, modifying and updating the emerging changes of the specialized investigator, and moving some learning objectives from one LD to another to allow for educational consistency. The hours were then adjusted accordingly.

The proposed changes affect the following learning domains (LDs):

- #60, *Surveillance*
- #61, *Administrative Procedures*
- #62, *Case Management and Sources of Information*
- #63, *Computer Crimes*

At the September 2006, Academy Consortium meeting, a Basic Course Testing Committee reviewed the student workbooks and the required tests and found that two of the revised domains no longer support assessment via written tests. Accordingly, the Consortium has recommended the removal of existing specifications that require students to pass POST-Constructed Knowledge Tests in LD 13 (*ABC Law*) and LD 41 (*Hazardous Materials*) from the *Training and Testing Specifications for Peace Officer Basic Courses*. The Commission approved this action at its January 25, 2007 Commission Meeting, and previously approved the removal of the tests in LD 30 (*Preliminary Investigation*) at its October 27, 2005, Commission meeting.

Upon adoption of the proposed amendments, academies and course presenters will be required to teach and test to the updated curriculum. The proposed effective date is July 1, 2007.

Adoption of Proposed Regulations

Following the close of the public comment period, the Commission may adopt the proposal substantially as set forth without further notice, or the Commission may modify the proposal if such modifications remain sufficiently related to the text as described in the Informative Digest. If the Commission makes changes to the language before the date of adoption, it will make available the text of any modified language, clearly indicated, at least 15 days before adoption, to all persons whose comments POST received during the public comment period, and to all persons who request notification from POST of the availability of such changes. Please address requests for the modified text to the agency official designated in this notice. The Commission will accept written comments on the modified text for 15 days after the date on which the revised text becomes available.

Text of Proposal, Rulemaking File, and Internet Access

The following information regarding the proposed regulatory action is available on the POST website at <http://www.post.ca.gov/RegulationNotices/RegulationNotices.asp>:

- POST bulletin and Notice of Proposed Regulatory Action
- Text of Proposed Regulatory Action
- Initial Statement of Reasons.

Individuals without Internet access may request a copy of the above documents by calling 916.227.4847 or by submitting a written request to the contact person listed below. Please refer to POST Bulletin 2007-03. The rulemaking file, which contains the above-mentioned documents and all information upon which POST is basing this proposal, will be available for inspection during the Commission's normal business hours (Monday through Friday, 8 a.m. to 5 p.m.).

The Final Statement of Reasons will be prepared after the close of the public comment period. To request a copy, contact POST at the above telephone number, write to the address under Contact Persons at the end of this notice, or view the document on the POST Internet website at the address cited above.

Estimate of Economic Impact

- Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None
- Non-Discretionary Costs/Savings to Local Agencies: None
- Local Mandate: None
- Costs to any Local Agency or School District for which Government Code Section 17561 Requires Reimbursement: None
- Significant Statewide Adverse Economic Impact Directly Affecting California Businesses, including Small Business: The Commission on Peace Officer Standards and Training has made an initial determination that the amended regulations will not have a significant statewide adverse economic impact directly affecting California businesses, including the ability to compete with businesses in other states. The Commission on Peace Officer Standards and Training has found that the proposed amendments will not affect California businesses, including small businesses, because the Commission sets selection and training standards for law enforcement and does not have an impact on California businesses, including small businesses.
- Cost Impacts on Representative Private Persons or Businesses: The Commission on Peace Officer Standards and Training is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- Effect on Housing Costs: The Commission on Peace Officer Standards and Training has made an initial determination that the proposed regulation would have no effect on housing costs.

Assessment

The adoption of the proposed regulation amendments will neither create nor eliminate jobs in the state of California, and will not result in the elimination of existing businesses or create or expand businesses in the State of California.

Consideration of Alternatives

To take this action, the Commission must determine that no reasonable alternative considered by the Commission, or otherwise identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective as and less burdensome to affected private persons than the proposed action.

Contact Persons

Please direct any inquiries or comments concerning the proposed action by mail to Patricia Cassidy, at Commission on POST, 1601 Alhambra Boulevard, Sacramento, CA, 95816-7083, by telephone at 916.227.4847, by FAX at 916.227.5271, or by email at Patti.Cassidy@post.ca.gov. Julie Hemphill is the back-up contact person; Julie is available by telephone at 916.227.0544, or by email at Julie.Hemphill@post.ca.gov.

TITLE 11. COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING

Notice of Proposed Action Concerning Vehicular Pursuits

Notice is hereby given that the Commission on Peace Officer Standards and Training (POST) proposes to amend regulations in Chapter 2 of Title 11 of the California Code of Regulations. This proposal is made pursuant to the authority vested by Penal Code § 13503 (powers of the Commission on POST) and § 13506 (Commission on POST authority to adopt regulations). Implementation of this proposal will interpret, implement, and make specific Penal Code § 13503(e) (Commission on POST authority to develop and implement programs to increase the effectiveness of law enforcement, including programs involving training and education courses), and Penal Code §13519.8 (Commission on POST authority to develop vehicle pursuit guidelines and training standards).

Public Comments Due by April 16, 2007

The Commission requests written comments on the proposed actions, which POST must receive no later

than 5:00 p.m. on April 16, 2007. Please send any written comments to Hal Snow, Interim Executive Director, at the Commission on POST, 1601 Alhambra Boulevard, Sacramento, CA, 95816-7083, or by fax at 916.227.2801.

A public hearing is not scheduled. Pursuant to Government Code §11346.8, any interested person, or his/her duly authorized representative, may request a public hearing. POST must receive the written request no later than 15 days prior to the close of the public comment period.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

In 1993, Senate Bill (SB) 601 (Marks) added Penal Code §13519.8, which defined “law enforcement officer” as any peace officer or employee of a local police or sheriff’s department and the California Highway Patrol, for purposes of implementing the legislative requirements. The legislation also required POST to: 1) create a course(s) of instruction for training law enforcement officers in the handling of high-speed vehicle pursuits, 2) develop uniform, minimum guidelines for response to high-speed vehicle pursuits for adoption by California agencies, and 3) prescribe supplementary training for law enforcement officers who received their basic training before January 1, 1995. Therefore, POST staff brought together subject matter experts (SMEs) to develop the guidelines and training specifications, which became available in 1995. POST adopted Regulations 1081(a) (22) and (23), which became effective 9-20-95. Subsection (22) requirements addressed line-level officers (below the middle management rank) and subsection (23) requirements addressed middle manager officers. The pursuit policy guideline publication is incorporated by reference in Regulation 1081. The original pursuit training specifications, in Regulations 1081(a) (22) and (23), referenced two (2) hours of training and one (1) hour of training, respectively.

Senator Gloria Romero subsequently authored SB 719 (2005), which Governor Schwarzenegger signed into law on October 4, 2005. SB 719 modified Penal Code §13519.8 (PC) and Vehicle Code (VC) § 170004.7, which now necessitates changes in the guidelines and training specifications. When enacted on January 1, 1988, VC § 170004.7 provided immunity for civil damages that result from a vehicle pursuit if an agency adopted a written policy on vehicular pursuits. SB 719 expands the conditions for immunity, effective July, 2007. At a minimum, all agency peace officers must receive annual training that covers the subjects

and elements set forth in the training guideline requirement set forth in PC §13519.

Proposed amendments to Regulation 1081 reflect the new, single standard of training for all California peace officers of an agency authorized by law to conduct vehicular pursuits required by changes in the PC §13519.8. The amendments specify the minimum topics the training must cover, which are the fifteen (15) pursuit guidelines established in PC §13519.8. Additional amendments reflect the need to train all officers annually on the agency-specific pursuit policy. The amendments also specify that a minimum of one (1) hour annually must be devoted to this training. Finally, the amendments specify additional resources an agency can use in addition to the agency-specific pursuit, (i.e., any or all — the publication *California Law Enforcement Vehicle Pursuit Guidelines*; video: *Pursuits Telecourse*; training DVD: *Pursuits Line-up Training*). Non-substantive changes in Regulation 1081 address format consistency, grammar, and moving more-recently adopted courses into alphabetical order by dropping the number reference in the outline.

The proposed amendments to Regulation 1081 and the *California Law Enforcement Vehicle Pursuit Guidelines* will require annual agency-specific pursuit policy training for all peace officer members of a California law enforcement agency that has legal authority to conduct vehicular pursuits and complies with new immunity requirements in VC § 17004.7 that is effective July 1, 2007.

Adoption of Proposed Regulations

Following the close of the public comment period, the Commission may adopt the proposal substantially as set forth without further notice or the Commission may modify the proposal if such modifications remain sufficiently related to the text as described in the Informative Digest. If the Commission makes changes to the language before the date of adoption, it will make available the text of any modified language, clearly indicated, at least 15 days before adoption, to all persons whose comments POST received during the public comment period, and to all persons who request notification from POST of the availability of such changes. Please address requests for the modified text to the agency official designated in this notice. The Commission will accept written comments on the modified text for 15 days after the date on which the revised text becomes available.

Text of Proposal, Rulemaking File, and Internet Access

The following information regarding the proposed regulatory action is available on the POST website at <http://www.post.ca.gov/RegulationNotices/RegulationNotices.asp>:

- POST bulletin and Notice of Proposed Regulatory Action
- Text of Proposed Regulatory Action
- Initial Statement of Reasons.

Individuals without Internet access may request a copy of the above documents by calling 916.227.4847 or by submitting a written request to the contact person listed below. Please refer to POST Bulletin 2007–02. The rulemaking file, which contains the above–mentioned documents and all information upon which POST is basing this proposal, will be available for inspection during the Commission’s normal business hours (Monday through Friday, 8 a.m. to 5 p.m.).

The Final Statement of Reasons will be prepared after the close of the public comment period. To request a copy, contact POST at the above telephone number, write to the address under Contact Persons at the end of this notice, or view the document on the POST Internet website at the address cited above.

Estimate of Economic Impact

- Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None
- Non–Discretionary Costs/Savings to Local Agencies: None
- Local Mandate: None
- Costs to any Local Agency or School District for which Government Code Section 17561 Requires Reimbursement: None
- Significant Statewide Adverse Economic Impact Directly Affecting California Businesses, including Small Business: The Commission on Peace Officer Standards and Training has made an initial determination that the amended regulations will not have a significant statewide adverse economic impact directly affecting California businesses, including the ability to compete with businesses in other states. The Commission on Peace Officer Standards and Training has found that the proposed amendments will have no effect on California businesses, including small businesses, because the Commission sets selection and training standards for law enforcement and does not have an impact on California businesses, including small businesses.
- Cost Impacts on Representative Private Persons or Businesses: The Commission on Peace Officer Standards and Training is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- Effect on Housing Costs: The Commission on Peace Officer Standards and Training has made an initial determination that the proposed regulation would have no effect on housing costs.

Assessment

The adoption of the proposed regulation amendments will neither create nor eliminate jobs in the state of California, and will not result in the elimination of existing businesses or create or expand businesses in the State of California.

Consideration of Alternatives

To take this action, the Commission must determine that no reasonable alternative considered by the Commission, or otherwise identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective as and less burdensome to affected private persons than the proposed action.

Contact Persons

Please direct any inquiries or comments concerning the proposed action by mail to Patricia Cassidy, at Commission on POST, 1601 Alhambra Boulevard, Sacramento, CA, 95816–7083, by telephone at 916.227.4847, by FAX at 916.227.5271, or by email at Patti.Cassidy@post.ca.gov. Senior Consultant Bryon Gustafson is the back–up contact person; Bryon is available by telephone at 916.227.3902, or by email at Bryon.Gustafson@post.ca.gov.

TITLE 13. CALIFORNIA HIGHWAY PATROL

DEPARTMENT OF CALIFORNIA HIGHWAY PATROL

NOTICE OF PROPOSED REGULATORY ACTION

TITLE 13, CALIFORNIA CODE OF REGULATIONS,
DIVISION 2, CHAPTER 7
AMEND ARTICLE 1, REPEAL ARTICLES 2 THROUGH
10 AND ARTICLE 15

CARGO SECUREMENT STANDARDS (CHP–R–2006–07)

The California Highway Patrol (CHP) proposes to amend the Motor Carrier safety Regulations contained in Title 13, California Code of Regulations (13CCR) to be consistent with the current version of adopted federal regulations in Title 49, Code of Federal Regulations (CFR).

INFORMATIVE DIGEST/PLAIN ENGLISH
OVERVIEW

California Vehicle Code (VC) Section 2402 authorizes the Commissioner of the CHP to make and enforce regulations as necessary to carry out the duties of the CHP. AB 3011 as introduced by Assembly Member Benoit adds Section 34500.3 to the VC. As adopted, Section 34500.3 VC states that the CHP shall adopt rules and regulations that are designed to promote the safe operation of vehicles, regarding cargo securement standards. The regulations adopted pursuant to this section shall be consistent with the securement regulations adopted by the United States Department of Transportation (USDOT) in Part 393 (commencing with Section 393.1) of Title 49 CFR as those regulations now exist or are amended in the future. Currently, California's loading regulations are contained in 13 CCR, Sections 1300 through 1425.

Adopting the federal cargo securement standards is required by newly chaptered statute, contained in Section 34500.3 VC, effective January 1, 2007. This rulemaking will enhance the competitiveness of California by eliminating state-only regulations which represent a negative impact on businesses and the economy and conflict with current federal regulations. These changes will also enhance public safety and unify regulations for all motor carriers of property.

AB 3011 repealed all statutory authorities to adopt cargo securement regulations, thereby rendering current regulations unenforceable. However, in order to ensure the continued safety of the motoring public, the California Highway Patrol is currently enforcing the federal cargo securement standards as a result of the approval of an emergency rulemaking, as of January 1, 2007. The specific commodities affected by AB 3011 are Baled Hay and Straw, Baled Cotton, Paper and Jute, Logs and Poles, Bunk Stake Assemblies, Junk and Scrap Metal, Steel Coils, Steel Plate, Sheet, and Tinplate, Empty Wooden Boxes, Detachable Freight Vans or Tank Containers, and Lumber and Lumber Products.

Failure to adopt these regulations could result in federal preemption of California's Motor Carrier Safety Regulations. If preempted, the state could not enforce any of these regulations as they apply to transportation in commerce, thus jeopardizing public safety and environmental protection. Failure to maintain consistency with Federal Motor Carrier Safety Regulations would also jeopardize Federal Motor Carrier Safety Assistance program grants used for commercial vehicle enforcement and training, and subsequently jeopardize federal highway funding to California. The loss of all or a portion of this funding would in itself represent a substantial negative impact on public safety.

PUBLIC COMMENTS

Any interested person may submit written comments on this proposed action via facsimile at (916) 446-4579, by email to cvsregs@chp.ca.gov, or by writing to:

CHP, Enforcement Services Division
Commercial Vehicle Section
ATTN: Officer Jason Golenor
P. O. Box 942898
Sacramento, CA 94298-0001

Written comments will be accepted until 5:00 PM, April 16, 2007, or at the scheduled hearing.

No public hearing has been scheduled. If any person desires a public hearing, a written request must be received by the CHP, Commercial Vehicle Section, no later than 15 days prior to the close of the written comment period.

AVAILABILITY OF INFORMATION

The CHP has available for public review an initial statement of reasons for the proposed regulatory action, the information upon which this action is based (the rulemaking file), and the proposed regulation text. Requests to review or receive copies of this information should be directed to the CHP at the above address, by facsimile at (916) 446-4579 or by calling the CHP, Commercial Vehicle Section, at (916) 445-1865. All requests for information should include the following information: the title of the rulemaking package, the requester's name, proper mailing address (including city, state and zip code), and a daytime telephone number in case the requestor's information is incomplete or illegible.

The rulemaking file is available for inspection at the CHP, Commercial Vehicle Section, 444 North Third Street, Suite 310, Sacramento, California. Interested parties are advised to call for an appointment.

All documents regarding the proposed action are also available through our website at www.chp.ca.gov/regulations.

Any person desiring to obtain a copy of the adopted text and a final statement of reasons may request them at the above noted address. Copies will also be posted on our website.

CONTACT PERSON

Any inquiries concerning the written materials pertaining to the proposed regulations or questions regarding the substance of the proposed regulations should be directed to Sergeant Jim Epperson or Officer Jason Golenor, CHP, Commercial Vehicle Section, at (916) 445-1865.

ADOPTION OF PROPOSED REGULATIONS

After consideration of public comments, the CHP may adopt the proposal substantially as set forth without further notice. If the proposal is modified prior to adoption and the change is not solely grammatical or non-substantive in nature, the full text of the resulting regulation, with the changes clearly indicated, will be made available to the public for at least 15 days prior to the date of adoption.

FISCAL AND ECONOMIC IMPACT

The California Highway Patrol has made an initial determination that this proposed regulatory action: (1) will have no effect on housing costs; (2) will not impose any new mandate upon local agencies or school districts; (3) involves no increased nondiscretionary or reimbursable costs or savings to any local agency, school district, state agency, or federal funding to the state; (4) will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California; (5) will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, as the majority of other states (especially neighboring) have already adopted these or similar requirements; and (6) may result in an indeterminate cost to a narrow segment of the regulated community. Any costs that are incurred are believed to be of an insignificant amount. The regulated community is encouraged to respond during the comment period of this regulatory process if significant impacts are identified.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

The California Highway Patrol is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

EFFECT ON SMALL BUSINESSES

The California Highway Patrol has determined that the proposed regulatory action may affect small businesses.

ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the CHP must determine that no rea-

sonable alternative considered by the CHP, or that has otherwise been identified and brought to the attention of the CHP, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action. The CHP invites interested parties to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

AUTHORITY

This regulatory action is being taken pursuant to Sections 2402, and 34500.3 VC.

REFERENCE

This action implements, interprets, or makes specific Sections 29200, 29800, 30800, 31510, 31520, 31530, 31540, 34506, 34506.3 VC.

TITLE 14. FISH AND GAME COMMISSION

Notice of Proposed Changes in Regulations

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 202, 205, 215, 220, 240, 315 and 316.5 of the Fish and Game Code and to implement, interpret or make specific sections 200, 205, 206, 215 and 316.5 of said Code, proposes to amend subsection (b)(91.1) of Section 7.50, Title 14, California Code of Regulations, relating to Klamath River sportfishing regulations.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Klamath River System, which consists of the Klamath and Trinity river basins, is managed through a cooperative system of State, Federal, and tribal management agencies. Salmonid regulations developed through this system are designed to meet natural and hatchery escapement needs for salmonid stocks, while providing equitable harvest opportunities for ocean sport and commercial, river sport, and tribal fisheries.

The Klamath River Fall Chinook (KRFC) salmon harvest and spawning escapement levels are established by the *Fishery Management Plan for Commercial and Recreational Salmon Fisheries off the Coast of Washington, Oregon, and California Commencing in 1978* adopted by the Pacific Fishery Management Council

(PFMC) for the U.S. Department of Commerce. The KRFC salmon harvest allocation between tribal and non-tribal fisheries is based on court decisions and allocation agreements between the various fishery representatives.

The PFMC is responsible for adopting recommendations for the management of sport and commercial ocean salmon fisheries in the Exclusive Economic Zone (three to 200 miles offshore) off the coasts of Washington, Oregon, and California. When approved by the Secretary of Commerce, these recommendations are implemented as ocean salmon fishing regulations by the National Marine Fisheries Service (NMFS).

The Fish and Game Commission (Commission) adopts regulations for the ocean salmon sport (inside three miles) and the Klamath River System sport fisheries which are consistent with federal fishery management goals. The Department of Fish and Game Director is authorized by Fish and Game Code to conform commercial salmon fishing regulations in State waters to federal fishery management goals.

The Klamath River System also supports Native American subsistence and occasional tribal commercial fisheries which are managed consistent with federal fishery management goals. Tribal fishing regulations are promulgated by the Hoopa and Yurok tribes.

River Sport Fishery Management:

Currently subsection (b)(91.1) of Section 7.50, Title 14, California Code of Regulations, regulates the allowable Chinook salmon sport harvest in the Klamath River System by an annual basin quota divided into sub areas and the distribution of the catch by seasons, and daily and weekly bag and possession limits.

The 2006 basin quota for the Klamath River System allowable sport harvest was zero adult KRFC salmon. A 300 adult KRFC salmon catch and release allowance was instituted to enable a sub-adult KRFC salmon, steelhead and trout fishery. The projections of the 2007 abundance of adult KRFC salmon will not be available from the PFMC until late February 2007 and the 2007 basin quota will be recommended by the PFMC and adopted by the Commission at their respective April 2007 meetings.

For public notice requirements, the Department recommends the Commission consider a range of 0–15,000 adult KRFC salmon quota in the Klamath River basin for the river sport fishery. This recommended range encompasses the historical range of the Klamath River basin quotas to allow for PFMC or Commission adjustments during the 2007 regulatory cycle. Annual adjustment of the Klamath River basin quota by the PFMC is necessary to meet natural and hatchery escapement needs for KRFC salmon stocks, while pro-

viding equitable harvest opportunities for ocean sport and commercial, river sport, and tribal fisheries.

The Commission may modify the Klamath River basin quota which is normally 15% of the non-tribal PFMC harvest allocation. Commission modifications need to meet biological and fishery allocation goals specified in law or established in the PFMC Salmon Fishery Management Plan otherwise harvest opportunities may be reduced in the California ocean fisheries by the NMFS.

Present regulations have no adult Chinook salmon retention in specific areas after August 15 in the Lower Klamath River and after April 1 in the Upper Klamath and Trinity rivers. The trout daily bag limit is 1 hatchery trout or 1 hatchery steelhead, and 1 brown trout. The salmon daily bag limit is 3 Chinook salmon, of which no more than 1 may be over 22 inches total length when the take of salmon over 22 inches total length is allowed. The possession limits are:

1. No more than 2 Chinook salmon over 22 inches total length may be retained in any 7 consecutive days when the take of salmon over 22 inches total length is allowed and
2. No more than 12 Chinook salmon may be possessed, of which no more than 2 may be over 22 inches total length when the take of salmon over 22 inches total length is allowed.

The Department is proposing the following changes to current regulations:

Basin Quota Management:

The annual Klamath River basin quota will be split evenly, with 50% of the quota allocated to the Klamath River downstream of the Highway 96 Bridge at Weitchpec and 50% to the remainder of the Klamath River System upstream of the Highway 96 Bridge at Weitchpec, including the Trinity River Basin. This division ensures equitable harvest of adult KRFC salmon in the upper and lower Klamath River System.

The Spit Area (within 100 yards of the channel through the sand spit formed at the Klamath River mouth), is proposed to close to all fishing after 15% of the Klamath River basin quota has been taken downstream of the Highway 101 bridge. This provision only applies if the Department projects that the total Klamath River basin quota will be met. This closure is designed to prevent excessive take near the mouth when fish are concentrated in this small area and provide equitable distribution of KRFC salmon with upper river anglers.

The area upstream of the Highway 96 Bridge at Weitchpec is further divided into three sub quotas:

1. 17% from 3,500 feet downstream of the Iron Gate Dam to the Highway 96 bridge at Weitchpec,

2. 16.5% for the Trinity River from Hawkins Bar to the confluence with the Klamath River, and
3. 16.5% for the Trinity River from Old Lewiston Bridge to Cedar Flat.

These sub area divisions are based upon historical angler effort distributions and ensure equitable harvest of adult KRFC salmon in the upper Klamath and Trinity rivers.

The 2007 basin quota is currently unknown, but all closures for adult Chinook salmon will be designed to maximize and distribute the harvest of adult KRFC salmon while managing the fishery within the annual quota.

The quota system requires the Department to monitor angler harvest of adult KRFC salmon in each sub-quota area. All sub-quota areas will be monitored on a real-time basis except for the following area:

Trinity River above Willow Creek: Due to funding and personnel reductions, the Department will be unable to deploy adequate personnel to conduct harvest monitoring in the Trinity River above Willow Creek for the 2007 season. The Department has reviewed all available Trinity River Chinook salmon harvest and run-timing data for this area. Based on this review, the Department developed a Harvest Predictor Model (HPM) which incorporates creel data from the Klamath River from Iron Gate Dam downstream to the confluence with the Pacific Ocean and the Trinity River from Lewiston Dam downstream to the confluence with the Klamath River. The HPM is driven by the positive relationship between the KRFC salmon harvested in the lower Klamath and Trinity rivers and KRFC salmon harvested in the upper Trinity River in past years. The HPM will be used by the Department to implement fishing closures to ensure that anglers do not exceed established quota targets.

There are two proposed exceptions to the harvest quota in the basin. Both apply to terminal fisheries in the vicinities of Iron Gate Hatchery and Trinity River Hatchery. Chinook salmon over 22 inches total length may be retained from 3,500 feet downstream of Iron Gate Dam to the Interstate 5 bridge when the Department determines that the adult fall-run Chinook salmon spawning escapement at Iron Gate Hatchery exceeds 8,000 fish. Chinook salmon over 22 inches total length may be retained downstream of the Old Lewiston Bridge to the mouth of Indian Creek when the Department determines that the adult fall-run Chinook salmon spawning escapement at Trinity River Hatchery exceeds 4,800 fish.

These exceptions are intended to provide angling opportunity after hatchery mitigation egg-take goals have been met. Both reaches are located in areas where natu-

ral spawning is limited and harvest will be composed primarily of excess hatchery stock.

Daily Bag Limit and Possession Limit:

No retention of adult Chinook salmon is proposed for the following areas, once the sub quota has been met:

1. Klamath River from Iron Gate Dam to Weitchpec from September 1 through November 30,
2. Klamath River from Weitchpec to the mouth of the Klamath River from August 15 through November 30,
3. Trinity River from Old Lewiston Bridge to Cedar Flat from September 15 through November 30,
4. Trinity River from Hawkins Bar to the mouth of the South Fork Trinity River from September 1 through November 30, and
5. Trinity River from the South Fork Trinity River mouth to the confluence with the Klamath River from September 1 through November 30.

These staggered openings and closures are designed to meet natural and hatchery escapement needs for KRFC salmon stocks, while providing equitable harvest opportunities under a quota system for all river areas.

The following measures are proposed regardless of the quota level:

No adult Chinook salmon may be retained in the following areas:

1. Klamath River from Iron Gate Dam to Weitchpec from April 1 through August 31, and
2. Trinity River from the South Fork Trinity River mouth to the confluence with the Klamath River from April 1 through August 31.

These closures would provide protection for naturally produced Spring Chinook salmon while providing sport harvest opportunity on the hatchery component of the Spring Chinook salmon in the lower Klamath River.

No fish may be retained on the Trinity River from Cedar Flat to Hawkins Bar from September 1 through November 30. This complete closure is designed to protect migrating salmon. An impediment in this area to salmon migration, Gray's Falls, causes salmon to accumulate in this area at some flow levels, where they are excessively vulnerable to take by illegal methods.

The Department is not proposing any changes to the salmon possession limits. Since the 2007 basin quota is currently unknown, the Department is not recommending any further changes in the general Chinook salmon daily bag limits for the 2007 Klamath River sport fishery.

Non-native brown trout have become well established in the Klamath River System, particularly in the Trinity River Basin. Brown trout are highly piscivorous

and prey upon juvenile Chinook salmon, coho salmon and steelhead trout. The Department is proposing increasing the brown trout bag limit up to five fish per day with 10 fish in possession. This proposed change will reduce predation on juvenile salmon and steelhead and align these regulations with statewide regulations.

The name Trinity River South Fork is proposed to be changed to South Fork Trinity River to reflect the name used on U.S. Geologic Survey maps. Other minor changes are proposed to improve the clarity and consistency of the regulations.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at Humboldt State University, Nelson Hall West — Goodwin Forum, 1 Harpst Street, Arcata, California, on Friday, March 2, 2007 at 8:30 a.m., or as soon thereafter as the matter may be heard.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the UC Davis, Bodega Marine Laboratory Lecture Hall, 2099 Westside Road, Bodega Bay, California, on April 13, 2007, at 8:30 a.m., or as soon thereafter as the matter may be heard.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Resources Building, Fish and Game Commission Conference Room, 1416 Ninth Street, Room 1320, Sacramento, California, on April 25, 2007, at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before April 20, 2007 at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@fgc.ca.gov. Written comments mailed, faxed or e-mailed to the Commission office, must be received before 5:00 p.m. on April 23, 2007. All comments must be received no later than April 25, 2007, at the hearing in Sacramento, CA. If you would like copies of any modifications to this proposal, please include your name and mailing address.

The regulations as proposed in **strikeout—underline** format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, John Carlson, Jr., Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to John Carlson, Jr., or Sherrie Koell at the preceding address or phone number. **Neil Manji, Fisheries Branch Chief, Department of Fish and**

Game, phone (916) 327-8840, has been designated to respond to questions on the substance of the proposed regulations. Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Business, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed regulations are projected to have an unknown impact on the net revenues to businesses servicing sport fishermen. This is not likely to affect the ability of California businesses to compete with businesses in other states. The preservation of Klamath River salmon stocks is necessary for the success of lower and upper Klamath River Basin businesses which provide goods and services related to fishing. The proposed changes are necessary for the continued

preservation of the resource and therefore the prevention of adverse economic impacts.

- (b) Impact on the Creation or Elimination of Jobs within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None.
- (c) Cost Impacts on a Representative Private Person or Business:
The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.
- (e) Nondiscretionary Costs/Savings to Local Agencies: None.
- (f) Programs Mandated on Local Agencies or School Districts: None.
- (g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.
- (h) Effect on Housing Costs: None.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business.

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

TITLE 17. DEPARTMENT OF HEALTH SERVICES

ACTION: Notice of Proposed Rulemaking
Title 17, California Code of Regulations

SUBJECT: Industrial Radiography Certification,
R-25-03

PUBLIC PROCEEDINGS

Notice is hereby given that the California Department of Health Services will conduct written public proceedings, during which time any interested person or such person's duly authorized representative may present statements, arguments or contentions (all of which are

hereinafter referred to as comments) relevant to the action described in this notice.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Radiation Control Law (Health & Saf. Code, §§114960–115273), requires the Department of Health Services (Department) to develop programs for licensing and regulating radioactive materials. (Health & Saf. Code, § 115000, subd. (b).) In 1962, the State of California ratified and approved the State entering into an agreement with the United States Atomic Energy Commission, the predecessor of the United States Nuclear Regulatory Commission (NRC), by which the federal agency discontinued its regulatory authority over certain radioactive materials. (Health & Saf. Code, § 115230.) By such action California became an "Agreement State."

A provision of the agreement between California and the NRC specifies that the State "will use its best efforts to maintain continuing compatibility between its program and the program of the [United States Atomic Energy] Commission for the regulation of like materials." (Health & Saf. Code, § 115235, art. V.) NRC's stated policy is "to evaluate Agreement State programs established pursuant to Section 274 of the Atomic Energy Act of 1954, as amended, to ensure they are adequate to protect public health and safety and compatible with NRC's regulatory program." To determine a state's compatibility, the NRC uses Management Directive 5.9, *Adequacy and Compatibility of Agreement State Programs, Handbook 5.9*. This handbook describes the specific criteria and process that are used to clarify the NRC program elements that should be adopted and implemented by an Agreement State for purposes of compatibility, and those NRC program elements that have a particular health and safety significance. The NRC rates the elements on the degree of compatibility required. Thus, the NRC requires that some be adopted by the states in a form identical to the NRC's while adoption of others need not be identical but are required to meet the essential objective of the program element. The NRC evaluates Agreement States every three to four years to determine if a state's radiation safety program meets the adequacy and compatibility criteria. If California fails to meet those criteria the NRC may revoke California's status as an Agreement State.

Radiation is used daily to detect defects in airplanes, pipelines, storage tanks, engines, and other non-human objects in, what is called, industrial radiography. Industrial radiography means the examination of the physical structure of materials, other than human beings or animals, by non-destructive methods, utilizing radiation. (Cal. Code Regs., tit. 17, §30330(b).) The levels of radi-

ation found in such operations are very high and can result in immediate harm to those exposed. Because of this, these radiographic operations are evaluated annually to ensure the public and workers are protected from unnecessary and harmful radiation and that those authorized to possess radiation sources continue to operate and control those sources safely.

Because industrial radiography is performed throughout the United States, the NRC proposed, in 1994, to require individuals who perform industrial radiography using radioactive materials be certified. (59 Fed.Reg. 9429 (Feb. 28, 1994).) The NRC finalized those regulations (62 Fed.Reg. 28947 (May 28, 1997)) and now requires an individual to be certified and that at least two qualified individuals (two-person rule), one of whom must be a certified radiographer, must be present during radiographic operations. Due to the cross-jurisdictional nature of industrial radiography, the NRC determined that Agreement States must have essentially identical requirements for radiographer certification and the two-person rule. The NRC also specified the criteria an organization must meet to be considered as a certification organization recognized by the NRC. Such an organization is called a certifying entity. (10 C.F.R. §34.3.)

Additionally, the NRC made changes addressing dosimetry technology. (65 Fed.Reg. 63749 (Oct. 24, 2000).) Dosimeters are used to determine the amount of radiation an individual receives. Recent developments have produced dosimeters that have higher sensitivities to radiation than either film badges or thermoluminescent devices (TLD), and require processing to determine the radiation dose. For example, optically stimulated luminescent dosimeters use optical lasers for processing, unlike the processing for a film badge that requires photographic development or the TLD that is processed using heat. Thus, it is likely that new dosimeter technologies and other processing techniques are likely to appear in the future. Therefore, the NRC has modified its regulation to allow the use of any type of personnel dosimeter that requires processing to determine radiation dose, provided that the processor of the dosimeter is accredited to process this type of dosimeter under the National Voluntary Laboratory Accreditation Program, operated by the National Institute of Standards and Technology.

The Department not only maintains a radiation control program for regulating radioactive material as an Agreement State but also maintains that program for regulating radioactive material not subject to the Atomic Energy Act of 1954 and radiation machines that produce radiation. Therefore, the purpose of this proposal is to specify industrial radiographer certification and address changes in dosimetry technology required by the NRC and to specify radiographer certification for

certain uses of radiation machines because they present similar radiation hazards as compared to radioactive material. Further, existing regulations are updated.

In developing this proposal, a workshop was held on May 14, 2002 to get input from stakeholders. Attendee's suggestions are addressed in this proposal. Further, because the NRC specifies criteria certification programs must meet to be recognized, other Agreement States were contacted during development of this proposal. Thus, the Department is aligning this proposal to be consonant insofar as possible with other state certification programs, which is consistent with Legislative policy. (Health & Saf. Code, § 114965(c).)

This regulation proposal also amends the statutory authority and reference citations for the applicable Health and Safety Code sections as recodified by Statutes 1995, chapter 415.

The regulations that implement, interpret and make specific the provisions of the Radiation Control Law are in title 17, California Code of Regulations, sections 30100 through 30395. Accordingly, the Department proposes to amend or adopt the following sections:

Amend **section 30195.3** for consistency with this proposal and NRC regulations.

Amend **section 30295** to make nonsubstantial changes for clarity.

Amend **section 30330** to specify defined terms used in the proposal.

Amend **section 30331** to specify the requirements for approval of radiation safety training providers.

Amend **section 30332** to make the section consistent with NRC regulations.

Amend **section 30332.1** to make the section consistent with NRC regulations.

Amend **section 30332.2** to make the section consistent with NRC regulations.

Amend **section 30332.3** to make the section consistent with NRC regulations.

Amend **section 30332.4** to make the section consistent with NRC regulations.

Amend **section 30332.5** to make the section consistent with NRC regulations.

Amend **section 30332.6** to make the section consistent with NRC regulations.

Amend **section 30332.7** to make the section consistent with NRC regulations.

Amend **section 30332.8** to make the section consistent with NRC regulations.

Amend **section 30333** to make the section consistent with NRC regulations.

Adopt **section 30333.05** to specify radioactive materials trainer requirements.

Adopt **section 30333.07** to specify radioactive materials radiation safety officer requirements.

Amend **section 30333.1** to make the section consistent with NRC regulations.

Amend **section 30333.2** to make the section consistent with NRC regulations.

Adopt **section 30333.3** to specify where copies of certain records must be maintained.

Amend **section 30334** to make the section consistent with NRC regulations and to require at least two qualified individuals be present during radiographic operations.

Repeal **section 30335** to recodify it to section 30335.10.

Adopt **section 30335.1** to specify radiographer certification categories and scopes.

Adopt **section 30335.2** to specify radiographer certification eligibility requirements.

Adopt **section 30335.3** to specify those certifying entities acceptable for reciprocity.

Adopt **section 30335.4** to specify provisional radiographer certification requirements needed for implementation of full radiographer certification.

Adopt **section 30335.5** to specify the contents of a complete radiographer certification application.

Adopt **section 30335.6** to require certificate holders to inform the Department of name or address changes.

Adopt **section 30335.10**, which is recodified from section 30335, to present the training curriculum in a sentence format. The minimum number of hours of training is specified.

Amend **section 30336** to clarify requirements for shielded-room radiography and require radiographer certification for operators. Requirements for field radiography are addressed in proposed section 30336.1. Requirements for cabinet radiography are deleted and addressed in section 30337. The American National Standard N537-1976 "Radiological Safety Standard for the Design of Radiographic and Fluoroscopic Industrial X-ray Equipment" (published as NBS Handbook 123, issued August 1977) is adopted by reference.

Adopt **section 30336.1** to clarify the requirements for field radiography. The American National Standard N537-1976 "Radiological Safety Standard for the Design of Radiographic and Fluoroscopic Industrial X-ray Equipment" (published as NBS Handbook 123, issued August 1977) is adopted by reference.

Adopt **section 30336.5** to specify radiation machine radiographer assistant requirements.

Adopt **section 30336.6** to specify radiation machine radiographer trainer requirements.

Adopt **section 30336.7** to specify radiation machine radiation safety officer requirements.

Adopt **section 30336.8** to specify the fees for certificates, approvals, replacement of identification cards and that those fees are nonrefundable.

Amend **section 30337** to clarify the requirements for cabinet X-ray systems. Requirements for cabinet radiography equipment addressed by existing section 30336(a) are placed in this section.

Adopt **section 30338** to specify grounds for revocation, suspension, amendment or restriction of radiographer certification and training provider approvals.

AUTHORITY

Sections 100275 and 115000, Health and Safety Code.

REFERENCE

Sections 114965, 114970, 115000, 115060, 115065, 115105, 115110, 115230, and 115235, Health and Safety Code.

COMMENTS

Any written comments pertaining to these regulations, regardless of the method of transmittal, must be received by the Office of Regulations by 5 p.m. on April 20, 2007, which is hereby designated as the close of the written comment period. Comments received after this date will not be considered timely. Persons wishing to use the California Relay Service may do so at no cost. The telephone numbers for accessing this service are: 1-800-735-2929, if you have a TDD; or 1-800-735-2922, if you do not have a TDD. Written comments may be submitted as follows:

1. By mail or hand-delivered to the Office of Regulations, Department of Health Services, MS 0015, 1501 Capitol Avenue, P.O. Box 997413, Sacramento, CA 95899-7413. It is requested but not required that written comments sent by mail or hand-delivered be submitted in triplicate; or
2. By fax transmission: (916) 440-7714; or
3. By email to regulation@dhs.ca.gov (it is requested that email transmissions of comments, particularly those with attachments, contain the regulation package identifier "R-25-03" in the subject line to facilitate timely identification and review of the comment), or
4. By using the "Making Comments on DHS Regulations" link on the Department website at <http://www.applications.dhs.ca.gov/regulations/>.

All comments, including email or fax transmissions, should include the author's name and U.S. Postal Service mailing address in order for the Department to provide copies of any notices for proposed changes to the regulation text on which additional comments may be solicited.

INQUIRIES

Inquiries regarding the substance of the proposed regulations described in this notice may be directed to Phillip Scott of Radiologic Health Branch at (916) 440-7978.

All other inquiries concerning the action described in this notice may be directed to Cathy L. Ruebusch of the Office of Regulations at (916) 440-7841, or to the designated backup contact person, Charles E. Smith, at (916) 440-7693.

CONTACTS

In any inquiries or written comments, please identify the action by using the Department regulation package identifier, R-25-03.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF REGULATIONS

The Department has prepared and has available for public review an initial statement of reasons for the proposed regulations, all the information upon which the proposed regulations are based, and the text of the proposed regulations. The Office of Regulations, at the address noted above, will be the location of public records, including reports, documentation, and other material related to the proposed regulations (rulemaking file). In addition, a copy of the final statement of reasons (when prepared) will be available upon request from the Office of Regulations.

Materials regarding the action described in this notice (including this public notice, the regulation text, and the initial statement of reasons) that are available via the Internet may be accessed at <http://www.applications.dhs.ca.gov/regulations/> and then clicking on the "Select DHS regulations" button.

In order to request a copy of this public notice, the regulation text, and the initial statement of reasons be mailed to you, please call (916) 440-7695 (or California Relay at 711/1-800-735-2929), or email regulation@dhs.ca.gov, or write to the Office of Regulations at the address noted above. Upon specific request, these documents will be made available in Braille, large print, and audiocassette or computer disk.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

The full text of any regulation which is changed or modified from the express terms of the proposed action will be made available by the Department's Office of Regulations at least 15 days prior to the date on which

the Department adopts, amends, or repeals the resulting regulation.

FISCAL IMPACT ESTIMATE

- A. Fiscal Effect on Local Government: Currently, there are no industrial radiography radioactive material (RM) licensees that are local governmental entities. Current database configuration for identifying industrial radiography (X-ray) registrants does not separate registrants by government and non-governmental entities. Therefore, fiscal impact to local government cannot be estimated collectively.
- B. Fiscal Effect on State Government: Currently, there are no industrial radiography RM licensees that are state governmental entities. Current database configuration for identifying industrial radiography (X-ray) registrants does not separate registrants by government and non-governmental entities.
- C. Fiscal Effect on Federal Funding of State Programs: None.
- D. All cost impacts, known to the Department at the time the notice of proposed action was submitted to the Office of Administrative Law, that a representative private person or business would necessarily incur in reasonable compliance with the proposed action: Each person applying for a Department ID card in industrial radiography would be required to pay the proposed application fee (\$75.00) and the proposed examination fee (\$75.00) for a total of \$150.00. The estimated fiscal impact on private persons is \$150.00 per person. However the certification renewal cycle is five years, the \$150.00 will only be paid once every five years.
- E. Other Nondiscretionary Cost or Savings Imposed on Local Agencies: None.

DETERMINATIONS

The Department has determined that the regulations would not impose a mandate on local agencies or school districts, nor are there any costs for which reimbursement is required by Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

The Department has made an initial determination that the regulations would not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The Department has determined that the regulation would not significantly affect the following:

1. The creation or elimination of jobs within the State of California. It is likely that current providers will need to hire to meet demands for educators in radiation safety; however, the number of new jobs cannot be estimated. Jobs will be created in that licensees and registrants will have to ensure that there are two qualified individuals at all operations when required. The number of new jobs cannot be estimated.
2. The creation of new businesses or the elimination of existing businesses within the State of California. It is likely that new businesses will increase to provide required training. However, the number of new jobs cannot be estimated. Some businesses may see a reduction in the number of operations due to the need to have two qualified individuals at all operations when required. The actual reduction cannot be estimated.
3. The expansion of businesses currently doing business within the State of California. It is likely that existing businesses will expand to provide training and to ensure two qualified individuals are at all operations when required.

The Department has determined that the regulations would affect small business.

The Department has determined that the regulations will have no impact on housing costs.

ADDITIONAL STATEMENTS AND COMMENTS

In accordance with Government Code Section 11346.5(a)(13) the Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action. No hearing has been scheduled; however any interested person or his or her duly authorized representative may request in writing, no later than 15 days prior to the close of the written comment period, a public hearing pursuant to Government Code Section 11346.8.

For individuals with disabilities, the Department will provide assistive services such as sign-language interpretation, real-time captioning, note takers, reading or writing assistance, and conversion of public hearing materials into Braille, large print, audiocassette, or computer disk. To request such services or copies in an alternate format, please call or write: Cathy L. Ruebusch, Office of Regulations, MS 0015, P.O. Box 997413, Sacramento, CA 95899-7413, voice (916) 440-7841 and/or California Relay 711/1-800-735-2929. Note: The range of assistive services avail-

able may be limited if requests are received less than ten business days prior to a public hearing.

TITLE 20. CALIFORNIA ENERGY COMMISSION

NOTICE OF PROPOSED ACTION

FOR AMENDMENT OF REGULATIONS GOVERNING RULES OF PRACTICE AND PROCEDURE, DATA COLLECTION, AND DISCLOSURE OF COMMISSION RECORDS

California Energy Commission
Docket No. 05-DATA-01
March 2, 2007

NOTICE

The California Energy Commission ("Commission") proposes to adopt, modify, and delete regulations under the authority of sections 25213 and 25218 of the Public Resources Code. These regulations are found at Articles 2 and 4 of Chapter 2 of Division 2 of Title 20, California Code of Regulations, Articles 1 and 2 of Chapter 3 of Division 2 of Title 20, and Article 2 of Chapter 7 of Division 2 of Title 20. These regulations address the Commission's rules of practice and procedure for Commission proceedings generally, and for complaint and investigation proceedings, energy data collection, and disclosure of Commission records. These changes implement, interpret, and make specific a number of statutory provisions found in the Public Resources Code, the Public Utilities Code, and the Government Code; the specific sections are identified in the authority and reference section found later in this notice. The amendments modify the reporting requirements for a broad range of participants in the California energy market, as well as modify the process used by the Commission to conduct various types of proceedings, and the requirements applicable to the disclosure of Commission records. In addition, the authority and reference section for a number of regulations is updated to reflect various statutory changes. The date set for adoption of the proposed changes to these regulations is as follows:

Commission Business Meeting
April 25, 2007
beginning at 10:00 a.m.
California Energy Commission
Hearing Room A
1516 9th Street
Sacramento, CA 95814

If you have a disability and require assistance to participate in the hearing, please contact Lou Quiroz at (916) 654-5146 at least five days in advance.

In addition, any interested person may submit written or oral comments on the proposed action. Interested persons may present oral statements about the proposed regulations at the adoption hearing, and may provide written comments to the Commission on or before 10:00 a.m. on April 25, 2007, by submitting them to:

Docket Office
California Energy Commission
Docket No. 05-DATA-01
1516 9th Street, MS-4
Sacramento, CA 95814

Participants should be aware that any of the proposed regulations could be substantively changed as a result of public comment, staff recommendation, or recommendations from Commissioners. Moreover, changes to the proposed regulations not indicated in the express terms could be considered if they improve the clarity or effectiveness of the regulations. If the Commission considers changes to the proposed regulations, pursuant to Government Code section 11346.8, a full copy of the text will be available for at least 15 days prior to the date on which the Commission adopts the resulting regulation, and opportunity for public comment will be provided.

BACKGROUND INFORMATION

Sections Affected

All affected sections are found in Division 2 of Title 20 of the California Code of Regulations, and include: 1230-1236.5, 1301-1311, 1341-1351, 2501-2503, and 2505-2508. Chapter 2 establishes the Commission's rules of practice and procedure, with Article 2 of that Chapter specifying rules that apply to all Commission proceedings, and Article 4 of that Chapter (containing Sections 1230-1236.5) specifically governing the Commission's complaint and investigation process. Chapter 3 identifies a series of data collection requirements adopted by the Commission, with Article 1 (containing Sections 1301-1311) governing quarterly fuel and energy reports, and Article 2 (containing Sections 1341-1351) establishing requirements for providing forecasts and assessments of energy loads and resources. Article 2 of Chapter 7 of Division 2 of Title 20 (containing Sections 2501-2503 and 2505-2508) implements the Commission's process for addressing the confidentiality and public access requirements of the California Public Records Act. Public Resources Code, sections 25213 and 25218(e) provide general authority for the Commission to adopt regulations, Public Resources Code, section 25320 authorizes the adoption of regulations specifically for data collection purposes, and Public Resources Code section 25539 authorizes

adoption of regulations governing the Commission's site certification process.

Within Articles 2 and 3 of Chapter 2, the Commission proposes to amend the following sections: the title of Article 2, and sections 1230, 1231, 1232, 1233, and 1236. The Commission proposes to delete the following sections: 1234, 1235. The Commission proposes to add the following new sections: 1233.5, 1234, 1236.5.

Within Articles 1 and 2 of Chapter 3, the Commission proposes to amend the following sections: 1301, 1302, 1303, 1304, 1305, 1306, 1307, 1308, 1309, 1310, 1341, 1342, 1343, 1344, 1345, 1347, 1348; 1350, and 1351. The Commission proposes to add new sections 1311, 1346, and 1349. The Commission proposes to delete section 1340.

Within Article 2 of Chapter 7, the Commission proposes to amend 2501, 2502, 2503, 2505, 2506, and 2507. The Commission proposes to add Section 2508.

The specific authority and reference for each of the sections proposed to be amended or added as a part of this rulemaking are listed at the end of this Notice.

Role of the Commission

The Commission was created by the Warren-Alquist State Energy Resources Conservation and Development Act (Public Resources Code section 25000 et seq.). The Act vests the Commission with a wide range of duties and responsibilities related to the development and conservation of energy resources in California. As the agency responsible for establishing the state's energy policy, the Commission collects, stores, analyzes, and disseminates a broad range of information pertaining to electricity generation.

In 2002, SB 1389 (Stats. 2002, ch. 568) was enacted, re-defining the Commission's data collection and analysis responsibilities in light of electric industry restructuring and other significant changes in the energy industry. That legislation repealed Chapter 4 of Division 15 of the Public Resources Code, and enacted a new Chapter 4 that significantly modified and expanded the Commission's responsibilities. In addition, new Commission responsibilities have been identified in several provisions of the Public Utilities Code, as well as in amendments to Chapter 4. Legislation adopting these changes include AB 1723 (Stats. 2005, ch. 703), addressing load migration, SB 1037 (Stats. 2005, ch. 366), addressing gas energy efficiency and energy efficiency programs of municipal utilities, AB 380 (Stats. 2005, ch. 367), concerning resource adequacy efforts of municipal utilities, and SB 1565 (Stats. 2004, ch. 692), directing the Commission to adopt a strategic plan for the state's electric transmission grid. Taken together, these statutes require the Commission to collect and disseminate data, conduct assessments and forecasts of all aspects of energy markets, collaborate with other en-

ties that participate in or regulate energy markets, and provide information on both a regular basis and on an as-needed basis to the Governor, the Legislature, and to the public.

In addition to the Commission's data collection responsibilities, the Commission is authorized to adopt regulations implementing the California Public Records Act (Govt. Code § 6250 et seq.), and rules of practice and procedure for a variety of proceedings that it conducts. These provisions are used in conjunction with the Commission's data collection and analysis responsibilities, as well as in other Commission proceedings.

INFORMATIVE DIGEST OF PROPOSED ACTION

Existing Laws and Regulations (§ 11346.5(a)(3)(A))

The Commission has been collecting energy-related data pursuant to its regulations since the 1970's. As statutory mandates and the energy market structure have changed, the Commission has modified its regulations to reflect these changes. Thus, there are currently a number of statutes and regulations governing the Commission's data collection activities. The statutes governing the Commission's responsibilities can be found, in part, in the Warren-Alquist Act (Pub. Resources Code § 25000 et seq.). There are also statutes within the Public Utilities Code that authorize Commission data collection and analysis. Existing regulations implementing these statutes are found in Division 2 of Title 20. The California Public Utilities Commission (CPUC) also collects energy-related data, as it regulates investor-owned gas and electric utilities. Statutes governing its responsibilities can be found in the California Public Utilities Code. The CPUC is subject to an exemption from the rulemaking provisions of the Administrative Procedure Act (See Govt. Code, § 11351), and it identifies its data collection requirements through rulings and orders. These requirements are changed quite frequently. To the extent any of the information submitted pursuant to the existing or proposed regulations is identical to that required by other regulatory entities, the Commission allows these filers to request permission from the Commission's Executive Director to submit the information using the format required by the other entities. Similarly, if identical data has been previously submitted to the Commission, the filer need only refer to the previously-submitted data in sufficient specificity to allow the data to be found and retrieved easily. In this way, the Commission is eliminating duplicative reporting requirements. (See Sections 1303(h) and (i), 1342(f) and (g).)

Comparable Federal Law (§ 11346.5(a)(3)(B))

There are no Federal statutes or regulations governing state agency procedural requirements. Nor is there Federal law governing the disclosure of public records under the California Public Records Act. There is Federal law requiring the submission of energy data to a variety of federal entities, including the Federal Energy Regulatory Commission (FERC), and the Energy Information Agency (EIA). In most instances, the data is not identical to that collected by the Commission; for example, it may be collected from a different group of market participants or the reporting periods may be of a different length. As part of a previous rulemaking, conducted in 2001, the Commission undertook an extensive effort to identify and eliminate any Commission regulations requiring submission of data to the Commission where that data could be obtained from FERC or EIA. In addition, in those circumstances in which the Commission's regulations inadvertently require filers to provide the same data to the Commission that they must provide to other agencies, the Commission's regulations also allow filers to request permission from the Commission's Executive Director to submit the information using the format required by the other agency. This eliminates any duplicative reporting requirements. (See Sections 1303(i), 1342(g).)

Policy statement (§ 11346.5(a)(3)(C))

This rulemaking can be divided into three broad parts, with three broad objectives. First, we propose to modify the Commission's regulations establishing rules of practice and procedure to modify the timelines and to clarify the process the Commission will follow in conducting a complaint or investigatory proceeding. Second, we propose significant revisions to the Commission's energy data collection regulations, in order to ensure that the regulations reflect changes to the energy industry that have occurred since the last rulemaking, and to more carefully distinguish between the different data submission requirements applicable to different groups of market participants. These changes should increase the accuracy of the data used by the Commission, other state agencies, and the Legislature to establish energy policy and to regulate the marketplace. Finally, after conducting a lengthy proceeding last year on confidentiality of certain energy data, we propose to modify the Commission's regulations governing the disclosure of Commission records in order to clarify those portions of the confidentiality regulations which filers found to be confusing, and to update the confidentiality status of several types of energy data.

Other Prescribed Matters (§11346.5(a)(4))

There are no other matters prescribed by statute applicable to the Energy Commission or to any specific regulation or class of regulations affected by this action.

COSTS TO PUBLIC AGENCIES AND TO
BUSINESSES AND PERSONS AFFECTED

Local School District or Local Agency Mandate Determination (§ 11346.5(a)(5))

Pursuant to Government Code section 11346.5(a)(5), the Commission is required to determine whether the proposed regulations, if adopted, will impose a mandate on local agencies or school districts, and if so, whether the mandate requires state reimbursement.

Proposed amendments to Commission regulations establishing rules of practice and procedure and proposed changes to regulations implementing the Public Records Act do not impose a state-mandated local program. They specify various procedures and timing requirements that the Commission itself, as well as various entities participating, in Commission proceedings must follow. None of the amendments to these sections require any new reports, filings, or activities.

However, the data collection portion of this rulemaking does amend the reporting requirements that are applicable to municipal utilities and irrigation districts. Pursuant to the Constitutional provisions governing reimbursement for local mandates, “local governments” are any city, county, city and county, school district, special district, authority, or other political subdivision of or within the state. (Cal. Const., Section XIII B, section 8.) Although there is no case law on the issue, municipal utilities and irrigation districts would appear to fall within this definition. These municipal utilities (referred to as local publicly-owned utilities in the regulations to reflect statutory definitions) and irrigation districts (collectively referred to as publicly-owned utilities in this Notice) are currently subject to reporting requirements applicable to “electric utilities”; under the proposed changes, they will be subject to reporting requirements applicable to “load-serving entities” or “LSEs”. The proposed changes reduce the reporting requirements applicable to LSEs in some areas and increase the reporting requirements in others. In addition, there is one new proposed section that is applicable only to municipal utilities. Some municipal utilities and irrigation districts will be eligible for an exemption from reporting requirements, based on their size. Thus, the effect of the modifications will vary depending on the municipal utility or irrigation district. However, both irrigation districts and municipal utilities could see increased reporting requirements as a result of this rulemaking. Nonetheless, these reporting requirements are not state mandates, as state mandates are limited to “new programs or higher levels of service”. (Cal. Const., Section XIII B, section 8.) The mandates activities must involve the provision of governmental services and must apply uniquely to the local agency. (*City*

of Sacramento v. State of California (1990) 50 Cal.3d 51, 266 Cal.Rptr. 139.) To the extent the regulations require publicly-owned utilities to submit data, the requirements are not unique to those entities, and are due to the fact that they have chosen to enter into the business of generating, distributing, and selling electricity, which is not a government service. Therefore, the proposed regulations will not impose a mandate on local agencies or school districts.

Cost/Savings Estimate (§ 11346.5(a)(6))

Pursuant to Government Code section 11346.5(a)(6), the Commission must prepare an estimate, in accordance with instructions adopted by the Department of Finance, of the costs or savings to any state agency, the cost to any local agency or district that is required to be reimbursed under Government Code section 17500 et seq., other nondiscretionary cost or savings imposed on local agencies, and the cost or savings in federal funding to the state. Included in this submittal is a completed Form 399, consisting of an Economic Impact Statement and a Fiscal Impact Statement, prepared in accordance with instructions adopted by the Department of Finance. The Form 399, and its attachments, provides documentation for the identification of any savings or costs associated with this action.

As discussed in the previous section, there are no costs imposed on local agencies that are required to be reimbursed under Government Code section 17500 et seq. With respect to costs or savings to state agencies, the Fiscal Impact Statement indicates that total current fiscal year costs to state agencies (the Commission and the Department of Water Resources) are \$263,700, and that total savings are \$67,819. Costs for subsequent years should drop, as much of the cost is due to the need to establish new fields in existing databases — a one-time activity. Nondiscretionary costs for the current fiscal year that are imposed on publicly-owned utilities (as discussed above, these consist of irrigation districts and municipal utilities) total \$718,665, with current fiscal year savings estimated to be \$60,656. Subsequent year costs for POUs are expected to be \$225,802.

Finally, the Fiscal Impact Statement demonstrates that there will be no costs or savings in federal funding to the state.

Significant Adverse Economic Business Impact Information (§ 11346.5(a)(7) and (8))

Subdivisions (a)(7) and (a)(8) of Government Code section 11346.5 require an agency undertaking a rulemaking to take certain actions with respect to findings concerning whether the proposal will have a significant, statewide, adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. When an agency determines that the proposal will not

have such an effect, it must make a declaration to that effect in the notice of proposed action, and provide in the record the facts, evidence, documents, testimony or other evidence to support the initial determination. The Commission has not yet completed the rulemaking process, but at this time, the Commission finds that no significant statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states will result from the proposed regulations. The rationale for that conclusion is as follows.

Changes in the Rules of Practice and Procedure and provisions relating to the Disclosure of Commission Records will not have any economic impact, as they are solely procedural in nature. The changes to the Data Collection regulations may increase costs for some sections, but the overall effect of the amendments is to reduce costs. Preliminarily, the Commission has concluded that the total statewide cost of compliance with all changes over the ten-year lifetime of the regulations is \$1,548,127. Because the regulations affect a variety of businesses that may be engaged in differing market sectors, no single business will be subject to the total costs. Similarly, reductions in reporting requirements will reduce total statewide cost of compliance by \$2,888,708, affecting different businesses differently. Thus, there will be an overall reduction in reporting costs of \$1,340,581, although it is not possible to predict how any given business will be affected. These conclusions, along with the initial and annual costs associated with each regulation are documented in the Economic Impact Statement and its attachments, which have been submitted to the Office of Administrative Law (OAL), and are available on the Energy Commission's website at http://www.energy.ca.gov/data_collection/index.html. In addition, the assumptions underlying the cost estimates for each regulation are explained in the attachments to the Economic Impact Statements, and summarized in the Initial statement of Reasons. It should be noted that the Economic Impact Statement does not include any consideration of any generalized benefits that may occur if the accuracy of energy information and energy market information is increased as a result of these amendments, as the Commission believes will be the case.

Cost Impact On Private Persons Or Directly Affected Businesses (§ 11346.5(a)(9))

Pursuant to Government Code section 11346.5(a)(9), the Commission has identified the potential cost impact of the proposed regulations on a representative private person or business. This impact is identified in the Economic Impact Statement and its attachments, which have been submitted to the Office of Administrative Law (OAL), and are available on the Energy Commission's

website at http://www.energy.ca.gov/data_collection/index.html. Because each regulation affects different businesses, and different subdivisions affect those businesses differently, there are widely varying initial and ongoing costs. They are identified by each subdivision in the Economic Impact Statement and its attachments. Initial costs vary from zero to \$3,000 for each section, and ongoing costs vary from reductions in reporting costs of \$1,500 per year to increase of \$5,400 per year per section. No private persons will be directly affected by this proposed action.

Results Of Assessment Required By Section 11346.3(b) (§ 11346.5(a)(10))

Government Code section 11346.5(a)(10) requires the Commission to include a statement of the assessment required by Government Code section 11346.3(b), which in turn requires all state agencies to assess whether and to what extent their proposed regulations affect the creation or elimination of jobs in California, the creation of new businesses or the elimination of existing businesses within the state, and the expansion of businesses currently doing business within the state. It is likely that the proposed modifications will have little to no effect on the creation or elimination of jobs and new businesses within the state, and little to no effect on the expansion of businesses currently doing business within the state. The modifications to the Rules of Practice and Procedure and to the regulations governing disclosure of Commission records will have no effect on jobs or businesses within the state. Changes to the Commission's data collection regulations will decrease reporting requirements applicable to various energy market participants in some instances and increase them in other instances. Overall, there are decreased reporting costs of \$1,340,581 for all sections combined over a ten-year period. (These changes are discussed in the Economic Impact Statement, which was submitted to OAL with this filing and which is summarized in the previous section of this Notice.) However, as discussed in the previous section, each type of business is affected differently depending upon which role(s) it plays in the energy market. Because the single biggest cost associated with any single amendment is still relatively low, the Commission preliminarily concludes that the proposed modifications will have no effect on the creation or elimination of jobs and new businesses within the state, and no effect on the expansion of businesses currently doing business within the state.

Finding Prescribed by Section 11346.3(c) (§ 11346.5(a)(11))

Government Code section 11346.5(a)(11) requires the Commission to include the finding required by Government Code section 11346.3(c), if required. That section states that no administrative regulation adopted on

or after January 1, 1993, that requires a report shall apply to businesses, unless the state agency adopting the regulation makes a finding that it is necessary for the health, safety, or welfare of the people of the state that the regulation apply to businesses. Modifying the Commission's Complaint and Investigation process and procedures implementing the Public Records Act will not require any business to submit a report to the Commission. The proposal to modify the Commission's data collection regulations does include requirements for new data submissions, and in some instances, increases in the frequency of data submission. The Commission finds that the proposed modifications are necessary for the health, safety, or welfare of the people of the state. The information that will be collected as a result of this proposed action is necessary to assess and understand how energy markets are functioning. Without this information, market manipulation and energy shortages of the type seen in 2000–2001 could recur. In addition, failure to properly understand energy markets could cause a loss of opportunities to invest appropriately in conservation, and alternative energy resources.

Housing Effects Statement (§ 11346.5(a)(12))

Pursuant to Government Code section 11346.5(a)(12), the Commission has determined, based on the nature of the proposed regulations, that they will not have a significant effect on housing costs. Modifying energy information reporting requirements that are applicable to energy market participants could have only the most indirect and minor effect on housing costs, and modifying the Commission's Complaint and Investigation process and procedures implementing the Public Records Act could have no such effect.

Consideration Of Alternative Proposals (§ 11346.5(a)(13))

Pursuant to Government Code section 11346.5(a)(13), the Commission must, before adopting the proposed regulations, determine that no reasonable alternative considered by it or that has otherwise been identified and brought to the attention of it would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

Determination of Effect on Small Business (California Code of Regulations, Title 1, § 4)

Pursuant to Title 1 of California Code of Regulations, section 4, the Commission concludes that the proposed regulatory action may affect two small businesses. All other businesses affected by the proposed regulatory action do not meet the definition of small business contained in Government Code, section 11342.610.

AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT

The Commission has prepared an Initial Statement of Reasons for the proposed regulations. To obtain a copy of the initial statement of reasons or the express terms, please contact Chris Tooker at (916) 654–1634 or by e-mail at ctooker@energy.state.ca.us, or Caryn Holmes at (916) 654–4178 or at cholmes@energy.state.ca.us. Alternatively, the Initial Statement of Reasons can be found on the Commission's website at http://www.energy.ca.gov/data_collection/index.html. Additionally, the Commission has available all the information upon which the proposed regulations are based; to obtain copies, please contact Chris Tooker at the phone number or e-mail address provided above, or contact the Commission's Docket Office for information about viewing this material in the docket for this proceeding: 05–DATA–01. If the Commission considers changes to the proposed regulations, pursuant to Government Code section 11346.8, a full copy of the text will be available for at least 15 days prior to the date on which the agency adopts the resulting regulation, and opportunity for public comment will be provided. The Commission will prepare a Final Statement of Reasons after adoption of the proposed regulations. Any interested person will be able to obtain a copy of that document by contacting Mr. Tooker or Ms. Holmes, or by visiting the Commission's website listed above: http://www.energy.ca.gov/data_collection/index.html. The Commission's Public Advisor is available to assist any person who wishes to participate in this proceeding. For assistance from the Public Advisor, please call Margaret Kim at (916) 654–4489 or toll-free in California at (800) 822–6228, or by e-mail at PAO@energy.state.ca.us. Any inquiries regarding this proposed action should be directed to Caryn Holmes, who can be reached at (916) 654–4178 or by e-mail at cholmes@energy.state.ca.us. As stated above, any interested person may present oral statements about the proposed regulations at the April 25, 2007 adoption hearing. They may also provide written comments to the Commission on or before 10:00 a.m. of the same day by submitting them to the Commission's Docket Office at the address identified above.

INTERNET ACCESS

The Commission maintains a website in order to facilitate public access to documents prepared and considered as part of this rulemaking proceeding. Documents prepared by the Commission for this rulemaking, including this NOPA, the Express Terms, the Initial Statement of Reasons, and the Economic and Fiscal Im-

fact Statements, as well as many other documents in the rulemaking file have been posted at: http://www.energy.ca.gov/data_collection/index.html.

STATUTORY AUTHORITY AND REFERENCE

The following are the proposed authority and reference citations for the regulations in Chapter 2 that are proposed to be amended:

§ 1230: Authority cited: Sections 25213, 25218(e), Public Resources Code. Reference: Section 11180, Government Code; Sections 25210, 25321, 25362, 25900, 25967, 25983, Public Resources Code.

§ 1231: Authority cited: Sections 25213, 25218(e), Public Resources Code. Reference: Section 11180, Government Code; Sections 25210, 25321, 25362, 25900, 25967, 25983, Public Resources Code.

§ 1232: Authority cited: Sections 25213, 25218(e), Public Resources Code. Reference: Section 11180, Government Code; Sections 25210, 25321, 25362, 25900, 25967, 25983, Public Resources Code.

§ 1233: Authority cited: Sections 25213, 25218(e), Public Resources Code. Reference: Section 11180, Government Code; Sections 25210, 25321, 25362, 25900, 25967, 25983, Public Resources Code.

§ 1233.5: Authority cited: Sections 25213, 25218(e), Public Resources Code. Reference: Section 11180, Government Code; Sections 25210, 25321, 25362, 25967, 25983, Public Resources Code.

§ 1234: Authority cited: Sections 25213, 25218(e), Public Resources Code. Reference: Section 11180, Government Code; Sections 25210, 25321, 25362, 25967, 25983, Public Resources Code.

§ 1235: Authority cited: Sections 25213, 25218(e), Public Resources Code. Reference: Section 11180, Government Code, Sections 25210, 25321, 25362, 25967, 25983, Public Resources Code.

§ 1236: Authority cited: Sections 25213, 25218(e), Public Resources Code. Reference: Section 11180, Government Code, Sections 25210, 25321, 25362, 25967, 25983, Public Resources Code.

§ 1236.5: Authority cited: Sections 25213, 25218(e), Public Resources Code. Reference: Section 11180, Government Code, Sections 25210, 25321, 25362, 25967, 25983, Public Resources Code.

The following are the proposed authority and reference citations for the regulations in Chapter 3 that are proposed to be amended:

§ 1301: Authority cited: Sections 25213, 25218(e), 25320, Public Resources Code. Reference: Sections 25005.5, 25216, 25216.5, 25300–25303, 25324, 25401, 25401.2, 25403, 25403.5, 25602, 25604, Public Resources Code, Sections 9615, 9620, Public Utilities Code.

§ 1302: Authority cited: Sections 25213, 25218(e), 25320, Public Resources Code. Reference: Sections 25005.5, 25100–25141, 25216, 25216.5, 25300, 25301, 25302, 25302.5, 25303, 25324, 25330 et seq., 25401, 25401.2, 25403, 25403.5, 25602, 25604, Public Resources Code, Sections 9615, 9620, Public Utilities Code.

§ 1303: Authority cited: Sections 25213, 25218(e), 25320, Public Resources Code. Reference: Sections 25005.5, 25216, 25216.5, 25300–25303, 25401, 25401.2, 25403, 25403.5, 25602, 25604, Public Resources Code, Sections 9615, 9620, Public Utilities Code.

§ 1304: Authority cited: Sections 25213, 25218(e), 25320, Public Resources Code. Reference: Sections 25005.5, 25216, 25216.5, 25300–25303, 25401, 25401.2, 25403, 25403.5, 25602, 25604, Public Resources Code.

§ 1305: Authority cited: Sections 25213, 25218(e), 25320, Public Resources Code. Reference: Sections 25005.5, 25216, 25216.5, 25300–25303, 25401, 25401.2, 25403, 25403.5, 25602, 25604, Public Resources Code.

§ 1306: Authority cited: Sections 25213, 25218(e), 25320, Public Resources Code. Reference: Sections 25005.5, 25216, 25216.5, 25300–25303, 25401, 25401.2, 25403, 25403.5, 25602, 25604, Public Resources Code.

§ 1307: Authority cited: Sections 25213, 25218(e), 25320, Public Resources Code. Reference: Sections 25005.5, 25216, 25216.5, 25300–25303, 25401, 25401.2, 25403, 25403.5, 25602, 25604, Public Resources Code.

§ 1308: Authority cited: Sections 25213, 25218(e), 25320, Public Resources Code. Reference: Sections 25005.5, 25216, 25216.5, 25300–25303, 25401, 25401.2, 25403, 25403.5, 25602, 25604, Public Resources Code.

§ 1309: Authority cited: Sections 25213, 25218(e), 25320, Public Resources Code. Reference: Sections 25005.5, 25216, 25216.5, 25300–25303, 25401, 25401.2, 25403, 25403.5, 25602, 25604, Public Resources Code.

§ 1310: Authority cited: Sections 25213, 25218(e), 25320, Public Resources Code. Reference: Sections 25005.5, 25216, 25216.5, 25300–25303, 25401, 25401.2, 25403, 25403.5, 25602, 25604, Public Resources Code.

§ 1311: Authority cited: Sections 25213, 25218(e), 25320, Public Resources Code. Reference: Sections 25005.5, 25216, 25216.5, 25300–25303, Public Resources Code, Section 9615, Public Utilities Code.

§ 1341: Authority cited: Sections 25213, 25218(e), 25320, Public Resources Code. Reference: Sections 25005.5, 25216, 25216.5(d), 25300, 25301, 25302,

25302.5, 25303, 25324, 25330 et seq., Public Resources Code, Sections 9615, 9620, Public Utilities Code.

§ 1342: Authority cited: Sections 25213, 25218(e), 25320, Public Resources Code. Reference: Sections 25005.5, 25216, 25216.5, 25300, 25301, 25302, 25302.5, 25303, 25324, 25330 et seq., Public Resources Code, section 9620, Public Utilities Code.

§ 1343: Authority cited: Sections 25213, 25218(e), 25320, Public Resources Code. Reference: Sections 25005.5, 25216, 25216.5, 25300, 25301, 25302, 25303, Public Resources Code.

§ 1344: Authority cited: Sections 25213, 25218(e), 25320, Public Resources Code. Reference: Sections 25005.5, 25216, 25216.5, 25300, 25301, 25302, 25303, Public Resources Code.

§ 1345: Authority cited: Sections 25213, 25218(e), 25320, Public Resources Code. Reference: Sections 25005.5, 25216, 25216.5, 25300, 25301, 25302, 25302.5, 25303, Public Resources Code.

§ 1346: Authority cited: Sections 25213, 25218(e), Sections 25005.5, 25216, 25216.5, 25300, 25301, ode Section 962, Public Utilities Code.

§ 1347: Authority cited: Sections 25213, 25218(e), 25320, Public Resources Code. Reference: Sections 25005.5, 25216, 25216.5, 25300, 25301, 25302, 25302.5, 25303, Public Resources Code.

§ 1348: Authority cited: Sections 25213, 25218(e), 25320, Public Resources Code. Reference: Sections 25005.5, 25216, 25216.5, 25300, 25301, 25302, 25303, Public Resources Code.

§ 1349: Note: Authority cited: Sections 25213, 25218(e), 25320, Public Resources Code. Reference: Sections 25005.5, 25216, 25216.5, 25300, 25301, 25302, 25303, 25324, 25330 et seq., Public Resources Code.

§ 1350: Authority cited: Sections 25213, 25218(e), 25320, Public Resources Code. Reference: Sections 25005.5, 25216, 25216.5, 25300, 25301, 25302, 25302.5, 25303, Public Resources Code.

§ 1351: Authority cited: Sections 25213, 25218(e), 25320, Public Resources Code. Reference: Sections 25005.5, 25216, 25216.5, 25300, 25301, 25302, 25302.5, 25303, 25324, Public Resources Code.

The following are the proposed authority and reference citations for the regulations in Chapter 7 that are proposed to be amended:

§ 2501: Authority cited: Sections 25213, 25218(e), Public Resources Code, Section 6253(a), Government Code. Reference: Article 1, Section 3, subdivision (b), California Constitution, Sections 6250, 6254, Government Code, Sections 25223, 25322, 25366, Public Resources Code.

§ 2502: Authority cited: Sections 25213, 25218(e), Public Resources Code, Section 6253(a), Government Code. Reference: Sections 25223, 25322, 25366, Public Resources Code.

§ 2503: Authority cited: Sections 25213, 25218(e), Public Resources Code, Section 6253(a), Government Code. Reference: Sections 25223, 25322, 25366, Public Resources Code, Sections 6250 et seq., Government Code.

§ 2504: Authority cited: Sections 25213, 25218(e), Public Resources Code, Section 6253(a), Government Code. Reference: Sections 25223, 25322, 25366, Public Resources Code, Sections 6253(a), 6256, 6257, Government Code.

§ 2505: Authority cited: Sections 25213, 25218(e), Public Resources Code, Section 6253(a), Government Code. Reference: Sections 25223, 25322, 25366, Public Resources Code, *Bakersfield City School District v. Superior Court* (2004) 118 Cal.App.4th 1041.

§ 2506: Authority cited: Sections 25213, 25218(e), Public Resources Code, Section 6253(a), Government Code. Reference: Sections 25223, 25322, 25366, Public Resources Code, Sections 6250 et seq., Government Code, *Bakersfield City School District v. Superior Court* (2004) 118 Cal.App.4th 1041.

§ 2507: Authority cited: Sections 25213, 25218(e), Public Resources Code, Section 6253(a), Government Code. Reference: Sections 25223, 25322, 25366, Public Resources Code.

§ 2508: Authority cited: Sections 25213, 25218(e), Public Resources Code, Section 6253(a), Government Code. Reference: Sections 25223, 25322, 25366, Public Resources Code, *Bakersfield City School District v. Superior Court* (2004) 118 Cal.App.4th 1041.

TITLE 22. DEPARTMENT OF HEALTH SERVICES

ACTION: Notice of Proposed Rulemaking
Title 22, California Code of Regulations

SUBJECT: Sign Language Interpreter Services,
R-28-02

PUBLIC PROCEEDINGS

Notice is hereby given that the California Department of Health Services will conduct written public proceedings, during which time any interested person or such person's duly authorized representative may present statements, arguments or contentions (all of which are hereinafter referred to as comments) relevant to the action described in this notice.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Americans with Disabilities Act (ADA) of 1990, Title 42 of the United States Code (USC), Sections 12101–12213 ensures equality of opportunity, full participation, independent living and economic self-sufficiency for individuals with disabilities. Title 28, Code of Federal Regulations (CFR), Section 36.303, interprets and makes specific the requirements under the ADA with respect to the auxiliary aids and services that must be provided by public accommodations to disabled individuals to ensure those individuals are not excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services. The professional office of a health care provider is included within the definition of a “public accommodation,” as that term is defined in Title 42, USC, Section 12181(7)(F). Under federal law, Title 28, CFR, Section 36.303 a public accommodation must provide appropriate auxiliary aids and services where necessary, to ensure effective communication with individuals with disabilities, unless the public accommodation can demonstrate that taking those steps would result in an undue burden, such as significant difficulty or expense. The terms auxiliary aids and services are defined to include “qualified interpreters” (Title 42, USC, Section 12102(1)(A)).

Existing State law, Section 54.1(a)(1) and (d) of the Civil Code, specifies that “individuals with disabilities shall be entitled to full and equal access, as other members of the general public, to accommodations, advantages, facilities, medical facilities, including hospitals, clinics, and physicians’ offices . . .,” and states that a violation of the right of any individual under the ADA shall also constitute a violation of Section 54.1.

The Department of Health Services (Department) proposes to amend Title 22, California Code of Regulations (CCR) to reimburse Medi-Cal enrolled providers, as specified in Section 51051, for the cost of sign language interpreter services used during the provision of medically necessary health care services that are provided in accordance with State Plan requirements and federal guidelines.

This regulatory action proposes to:

- 1) Amend Section 51098.5 to define sign language interpreter services as those services provided by a certified or non-certified interpreter, meeting the specified standards set forth in Section 51202.5, during the provision of medically necessary health care services provided by a Medi-Cal enrolled provider, such as those specified in Section 51051.

- 2) Amend Section 51202.5 to specify that in the circumstance where a Medi-Cal enrolled provider has determined that the interpreter selected by the beneficiary does not communicate effectively and the result may be an adverse effect for the beneficiary, the provider is required to select an alternate interpreter. In addition, the Medi-Cal enrolled provider must maintain a written statement of reasons for this action in the beneficiary’s medical record, to be available pursuant to Section 51476(g).
- 3) Amend Section 51309.5 to expand the scope of the health care and related services for which Medi-Cal will reimburse enrolled providers for utilizing sign language interpreter services. These expanded services include the following:
 - a) Providing instructions regarding all medication,
 - b) Explaining instructions for self-care and/or for therapy activities, upon discharge from a health care facility to an unsupervised home setting, and
 - c) Obtaining or providing case management information.
- 4) Amend Section 51503.3 to include reimbursement for sign language interpreter services for Medi-Cal enrolled providers that employ fewer than fifteen employees.

AUTHORITY

Sections 10725 and 14105, Welfare and Institutions Code.

REFERENCE

Section 54.1, Civil Code; Section 14000, Welfare and Institutions Code; 42 USC Sections 12101 et seq.; 28 CFR Sections 35.130(a) and (b) and 36.303; and 45 CFR Sections 84.22(c), and 84.4(a) and (b), and 84.52(d).

COMMENTS

Any written comments pertaining to these regulations, regardless of the method of transmittal, must be received by the Office of Regulations by 5 p.m. on April 20, 2007, which is hereby designated as the close of the written comment period. Comments received after this date will not be considered timely. Persons wishing to use the California Relay Service may do so at no cost.

The telephone numbers for accessing this service are: 1-800-735-2929, if you have a TDD; or 1-800-735-2922, if you do not have a TDD. Written comments may be submitted as follows:

1. By mail or hand-delivered to the Office of Regulations, Department of Health Services, MS 0015, 1501 Capitol Avenue, P.O. Box 997413, Sacramento, CA 95899-7413. It is requested but not required that written comments sent by mail or hand-delivered be submitted in triplicate; or
2. By fax transmission: (916) 440-7714; or
3. By email to regulation@dhs.ca.gov (it is requested that email transmissions of comments, particularly those with attachments, contain the regulation package identifier "R-28-02" in the subject line to facilitate timely identification and review of the comment), or
4. By using the "Making Comments on DHS Regulations" link on the Department website at <http://www.applications.dhs.ca.gov/regulations/>.

All comments, including email or fax transmissions, should include the author's name and U.S. Postal Service mailing address in order for the Department to provide copies of any notices for proposed changes to the regulation text on which additional comments may be solicited.

INQUIRIES

Inquiries regarding the substance of the proposed regulations described in this notice may be directed to Lilia Coleman of the Medi-Cal Benefits Branch at (916) 552-9574.

All other inquiries concerning the action described in this notice may be directed to Lynette Cordell of the Office of Regulations at (916) 650-6827, or to the designated backup contact person, Chuck Smith at (916) 440-7695.

CONTACTS

In any inquiries or written comments, please identify the action by using the Department regulation package identifier, R-28-02.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF REGULATIONS

The Department has prepared and has available for public review an initial statement of reasons for the proposed regulations, all the information upon which the proposed regulations are based, and the text of the proposed regulations. The Office of Regulations, at the address noted above, will be the location of public records,

including reports, documentation, and other material related to the proposed regulations (rulemaking file). In addition, a copy of the final statement of reasons (when prepared) will be available upon request from the Office of Regulations.

Materials regarding the action described in this notice (including this public notice, the regulation text, and the initial statement of reasons) that are available via the Internet may be accessed at <http://www.applications.dhs.ca.gov/regulations/> and then clicking on the "Select DHS regulations" button:

In order to request a copy of this public notice, the regulation text, and the initial statement of reasons be mailed to you, please call (916) 440-7695 (or California Relay at 711/1-800-735-2929), or email regulation@dhs.ca.gov, or write to the Office of Regulations at the address noted above. Upon specific request, these documents will be made available in Braille, large print, and audiocassette or computer disk.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

The full text of any regulation which is changed or modified from the express terms of the proposed action will be made available by the Department's Office of Regulations at least 15 days prior to the date on which the Department adopts, amends, or repeals the resulting regulation.

FISCAL IMPACT ESTIMATE

- A. Fiscal Effect on Local Government: None
- B. Fiscal Effect on State Government: None
- C. Fiscal Effect on Federal Funding of State Programs: None
- D. All cost impacts, known to the Department at the time the notice of proposed action was submitted to the Office of Administrative Law, that a representative private person or business would necessarily incur in reasonable compliance with the proposed action: The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- E. Other Nondiscretionary Cost or Savings Imposed on Local Agencies: None

DETERMINATIONS

The Department has determined that the regulations would not impose a mandate on local agencies or school districts, nor are there any costs for which reimburse-

ment is required by Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

The Department has made an initial determination that the regulations would not have a significant state-wide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The Department has determined that the regulations would not significantly affect the following:

- (1) The creation or elimination of jobs within the State of California.
- (2) The creation of new businesses or the elimination of existing businesses within the State of California.
- (3) The expansion of businesses currently doing business within the State of California.

The Department has determined that the regulations would affect small businesses. Some Medi-Cal providers that offer sign language interpreter services would derive a benefit from the implementation of these regulations because of the expansion of reimbursable services. The Medi-Cal Program is a voluntary program for providers who elect to participate.

The Department has determined that the regulations will have no impact on housing costs.

ADDITIONAL STATEMENTS AND COMMENTS

In accordance with Government Code Section 11346.5(a)(13) the Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

No hearing has been scheduled; however any interested person or his or her duly authorized representative may request in writing, no later than 15 days prior to the close of the written comment period, a public hearing pursuant to Government Code Section 11346.8.

For individuals with disabilities, the Department will provide assistive services such as sign-language interpretation, real-time captioning, note takers, reading or writing assistance, and conversion of public hearing materials into Braille, large print, audiocassette, or computer disk. To request such services or copies in an alternate format, please call or write: Linda Tutor, Office of Regulations, MS 0015, P.O. Box 997413, Sacramento, CA 95899-7413, voice (916) 440-7695 and/or California Relay 711/1-800-735-2929. Note: The range of assistive services available may be limited if requests are received less than ten business days prior to a public hearing.

TITLE 25. DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

NOTICE OF PROPOSED RULEMAKING FOR THE HOME INVESTMENT PARTNERSHIPS (HOME) PROGRAM

NOTICE IS HEREBY GIVEN that the Department of Housing and Community Development (Department) proposes to formally amend regulations which govern implementation of the State Home Investment Partnerships Program (HOME). The existing regulations are codified in Title 25, Subchapter 2 (commencing with section 8200) of the California Code of Regulations.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department. The written comment period begins March 2, 2007 and closes at 5:00 p.m. on April 16, 2007. The Department will consider comments received during this time-frame. Please address your e-mail comments to Christina DiFrancesco at cdifrancesco@hcd.ca.gov. Written comments can also be sent via mail to Christina DiFrancesco, Department of Housing and Community Development, P.O. Box 952054, Sacramento, California 94252-2054, or via fax to (916) 322-2904, attention: Christina DiFrancesco.

PUBLIC HEARING

A public hearing regarding this proposed regulatory action is scheduled for April 16, 2007 from 12:00 P.M.-5:00 P.M. at the Department's Headquarters Office, 1800 Third Street, Room 183, Sacramento, California. Any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest below. The Department requests, but does not require, that persons who make oral comments at the hearing also submit a written copy of their testimonies at the hearing.

AUTHORITY AND REFERENCE

HCD is conducting this rulemaking activity pursuant to the authority provided by Health and Safety Code Sections 50406 and 50896.3(b). These regulations implement, interpret and make specific amendments to Chapter 12 (commencing with Section 50896) of Part 2 of Division 31 of the Health & Safety Code.

INFORMATIVE DIGEST/POLICY STATEMENT
OVERVIEW

Health and Safety Code 50407 establishes that the Department is responsible for coordinating federal-state relationships in housing and community development. In conjunction with this responsibility, Health and Safety Code section 50406 directs the Department to be responsible for the allocation of Federal Home Investment Partnership Program funds. Consequently, the State of California receives money from the U.S. Department of Housing and Urban Development to make grants to eligible cities and counties and direct loans and grants to private organizations that qualify as Community Housing Development Organizations (CHDOs). These regulations establish procedures for the award and disbursement of HOME funds and establish policies and procedures for the use of these funds to meet the purposes contained in Title II of Public Law No. 101-625, 104 Stat. 4079, known as the Cranston-Gonzalez National Affordable Housing Act of 1990 as amended by the Housing and Community Development Housing Act of 1992, Public Law No. 102-550. These funds can be used for a variety of housing-related uses provided the State, the cities and counties and the CHDOs comply with a comprehensive set of requirements prescribed by the Federal government regulations in 24 CFR part 92.

The proposed changes to the State HOME Regulations are summarized as follows.

Section 8204. Eligible Applicant Amendments require State Recipients and CHDOs to submit direct evidence with their HOME application that they are in compliance with the submittal requirements of the OMB A-133 Single Audit Report.

Section 8207. Amount of HOME Assistance Amendments permit primary lender loan terms for first-time homebuyer loans to exceed thirty years.

Section 8207.1. Homebuyer Education Requirements This new section requires first-time homebuyers assisted with HOME funds to complete a homebuyer education course, and sets forth the basic topics to be covered. This new section is similar to that of the Department's CalHome Program.

Section 8208. Affordability Requirements Amendments clarify how rent restrictions for HOME-funded rental projects shall be established by the Department.

Section 8209. Tenant-Based Rental Assistance Amendments permit use of Tenant-Based Rental Assistance funds outside of the jurisdiction to which those funds were awarded, but within the county of the jurisdiction.

Section 8211. Application Requirements/Form Amendments require submission of certain documents

to evaluate project feasibility, including but not limited to, a market study, appraisal, and a Phase I/Phase II Environmental Site Assessments or lead, asbestos, and mold assessments. Basic standards for preparation of the reports are also set forth. First-time homebuyer projects must also submit project guidelines.

Section 8212. Application Selection and Evaluation Amendments to this section do the following: (1) clarify that program applications, rental project applications, and first-time homebuyer applications will be rated and ranked separately; (2) Increase the number of points in the State Objectives rating category from 50 to 150; (3) amend the prior performance rating factor to deduct points based on the prior performance of the developer, owner, and managing general partner; (4) clarify that evaluation of rental project feasibility also includes an evaluation of compliance with State and federal HOME requirements, and (5) set forth criteria for evaluating the feasibility of first-time homebuyer projects.

Section 8212.1. Allocation by Type of Activity and Rural Location Amendments to this section do the following: (1) establish a separate minimum allocation of 5% for first-time homebuyer projects; (2) clarify that the minimum allocation for programs and rental projects shall be 40%; (3) provide that in the event that the minimum allocation for program activities is undersubscribed, funds made available under a separate NOFA may be divided equally among all eligible applicants, and (5) clarify that program applications, rental project applications, and first-time homebuyer applications will be rated and ranked separately.

Section 8212.2. Deep Targeting This new section sets forth the requirements for the award of deep targeting funds by the Department.

Section 8213. Conditional Reservation of Funds Amendments clarify that applications will be ranked according to their scores compared to other applications competing for the same allocation of funds.

Section 8216. Reporting and Recordkeeping Amendments will require projects participating in the HOME Program to submit monthly status reports until project completion.

Section 8217. Project Deadlines Amendments to this section conform to the amendments in Section 8212 regarding rating point deductions for missed project deadlines.

IMPACT OF PROPOSED REGULATIONS

LOCAL MANDATE

The Department has determined that these regulations do not impose a mandate on local agencies or school districts. Eligibility for the program is limited to

entities demonstrating willingness and capacity to develop and administer affordable housing. In any case, participation in the program is voluntary.

FISCAL IMPACT

The Department has determined that no savings or increased costs to any State agency, no reimbursable costs or savings under Part 7 (commencing with Section 17500) of Division 4 of the Government Code to local agencies or school districts, no nondiscretionary costs or savings to local agencies or school districts, and no costs or savings in Federal funding to the State will result from the proposed action.

EFFECT ON SMALL BUSINESS

The Department has determined that the proposed action has no impact on small business because participation in the HOME Program is voluntary.

EFFECT ON HOUSING COSTS

The Department has determined that the proposed action has no significant impact on housing costs in California.

INITIAL DETERMINATION OF STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESSES

The Department has made an initial determination that the proposed action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

ASSESSMENT STATEMENT

The Department has determined that the regulations will not affect the creation or elimination of jobs in California; the creation of new businesses or the elimination of existing businesses within California; or the expansion of businesses currently operating in California. In any case, participation in the program is voluntary.

COST IMPACTS ON PRIVATE PERSONS OR BUSINESSES DIRECTLY AFFECTED

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the pro-

posed action. While private businesses (including non-profits) and individuals are eligible to receive program funds under the program, participation is voluntary.

CONSIDERATION OF ALTERNATIVES

The Department of Housing and Community Development must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

AVAILABILITY OF TEXT OF PROPOSED REGULATIONS AND STATEMENT OF REASONS

The text of the proposed regulations is available upon request, along with the Initial Statement of Reasons, prepared by the Department, which provides the reasons for the proposals, and is available on the Department's web site, at <http://www.hcd.ca.gov/fa/home/>. All information the Department is considering as a basis for this proposal is maintained in a rulemaking file, which is available for inspection at the address noted below. Copies can be obtained by contacting Christina DiFrancesco at the address and telephone number noted below.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the written comment period, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications, which are sufficiently related to the originally proposed text, it will make the modified text—with changes clearly indicated—available to the public for at least 15 days before the Department adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Christina DiFrancesco at the address indicated below. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF RULEMAKING DOCUMENTS

All of the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public review, by contacting Christina DiFrancesco at the address and telephone number noted below.

AVAILABILITY OF FINAL STATEMENT OF
REASONS

At the conclusion of this rulemaking, a Final Statement of Reasons will be prepared as required by Government Code section 11346.9. This document will be available from the contact person named below.

CONTACT PERSON

HCD: **CHRISTINA
DIFRANCESCO
(916) 322-0918**

HCD BACK-UP: **LENORA FRAZIER
(916) 323-7288**

HCD Address: **State Department of
Housing and Community
Development
1800 Third Street,
Room 390
Sacramento, California
95814**

HCD Website: Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations may be accessed through our website at:
<http://www.hcd.ca.gov/fa/home/>

HCD Facsimile No: **(916) 322-2904**

The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period. Inquiries concerning the substance of the proposed rulemaking action, as well as request for the documents noted should be directed to:

**Christina DiFrancesco,
HOME Program Specialist
Department of Housing and Community
Development
1800 Third Street, Suite 390
Sacramento, California 95814
Telephone (916) 322-0918
Fax: (916) 322-2904
E-mail: cdifrancesco@hcd.ca.gov**

GENERAL PUBLIC INTEREST

**TITLE 2. DEPARTMENT OF FAIR
EMPLOYMENT AND HOUSING**

NOTICE IS HEREBY GIVEN that the prospective contractors listed below have been required to submit a Nondiscrimination Program (NDP) or a California Employer Identification Report (CEIR) to the Department of Fair Employment and Housing, in accordance with the provisions of Government Code Section 12990. No such program or (CEIR) has been submitted and the prospective contractors are ineligible to enter into State contracts. The prospective contractor's signature on Standard Form 17A, 17B, or 19, therefore, does not constitute a valid self-certification. Until further notice, each of these prospective contractors in order to submit a responsive bid must present evidence that it's Nondiscrimination Program has been certified by the Department.

ASIX Communications, Inc.
DBA ASI Telesystems, Inc.
21150 Califa Street
Woodland Hills, CA 91367

Bay Recycling
800 77th Avenue
Oakland, CA 94621

C & C Disposal Service
P.O. Box 234
Rocklin, CA 95677

Choi Engineering Corp.
286 Greenhouse Marketplace, Suite 329
San Leandro, CA 94579

Fries Landscaping
25421 Clough
Escalon, CA 95320

Marinda Moving, Inc.
8010 Betty Lou Drive
Sacramento, CA 95828

MI-LOR Corporation
P.O. Box 60
Leominster, MA 01453

Peoples Ridesharing
323 Fremont Street
San Francisco, CA 94105

San Diego Physicians & Surgeons Hospital
446 26th Street
San Diego, CA

Southern CA Chemicals
8851 Dice Road
Santa Fe Springs, CA 90670

Tanemura and Antle Co.
1400 Schilling Place
Salinas, CA 93912

Turtle Building Maintenance Co.
8132 Darien Circle
Sacramento, CA 95828

Univ Research Foundation
8422 La Jolla Shore Dr.
La Jolla, CA 92037

Vandergoot Equipment Co.
P.O. Box 925
Middletown, CA 95461

**CALIFORNIA FISH AND GAME
COMMISSION**

NOTICE OF RECEIPT OF PETITION

NOTICE IS HEREBY GIVEN that, pursuant to the provisions of Section 2073.3 of the Fish and Game Code, the California Fish and Game Commission, on February 7, 2007, received a petition from The Bay Institute, Center for Biological Diversity, and Natural Resources Defense Council to take emergency action to uplist the delta smelt (*Hypomesus transpacificus*) from threatened to endangered species status.

Delta smelt are endemic to the upper reaches of the San Francisco Bay Bay-Delta Estuary.

Pursuant to Section 2073 of the Fish and Game Code, on February 16, 2007, the Commission transmitted the petition to the Department of Fish and Game for review pursuant to Section 2073.5 of said code. The Commission will consider taking emergency action to uplist the delta smelt from threatened to endangered species status at its April 12, 2007, Commission meeting in Bodega Bay. Interested parties may contact Mr. Neil Manji, Chief, Fisheries Branch, Department of Fish and Game, 1416 Ninth Street, Sacramento, CA 95814, or telephone (916) 327-8840 for information on the petition or to submit information to the Department relating to the petitioned species.

**OAL REGULATORY
DETERMINATIONS**

**DEPARTMENT OF CORRECTIONS AND
REHABILITATION**

OFFICE OF ADMINISTRATIVE LAW

**DETERMINATION OF ALLEGED
UNDERGROUND REGULATIONS**

**(Pursuant to Government Code Section 11340.5
and Title 1, section 270, of the California Code of
Regulations)**

STATE OF CALIFORNIA

OFFICE OF ADMINISTRATIVE LAW

**2007 OAL DETERMINATION NO. 3
(OAL FILE # CTU 06-0628-01)**

**REQUESTED BY: MICHAEL PRICE
CONCERNING: DEPARTMENT OF
CORRECTIONS AND
REHABILITATION—
PERSONAL PROPERTY
LIMITS PLACED ON
CALIFORNIA INMATES**

**DETERMINATION ISSUED
PURSUANT TO
GOVERNMENT CODE
SECTION 11340.5.**

SCOPE OF REVIEW

A determination by the Office of Administrative Law (OAL) evaluates whether or not an action or enactment by a state agency complies with California administrative law governing how state agencies adopt regulations. Nothing in this analysis evaluates the advisability or the wisdom of the underlying action or enactment. Our review is limited to the sole issue of whether the challenged rule is an "underground regulation" as defined in Government Code section 11340.5, and is therefore subject to the rulemaking requirements of the APA. OAL has neither the legal authority nor the technical expertise to evaluate the underlying policy issues involved in the subject of this determination.

ISSUE

On June 18, 2006, Mr. Michael Price submitted a petition to the Office of Administrative Law (OAL), alleging that the California Department of Corrections and Rehabilitation (CDCR) employs an underground regulation in violation of Government Code section 11340.5¹. The alleged underground regulation is the Authorized Personal Property Schedule (APPS) which was adopted in March of 2005 as Article 43 of Chapter 5 of the CDCR Department Operations Manual (DOM). The APPS enumerates in great detail the types and quantities of property an inmate is allowed to possess based upon the inmate's classification. APPS provisions cover the type and number of clothing items an inmate may have, and the specific type of appliances, grooming products, food products and other property. For example, an inmate in Privilege Group U may have "Pencil Sharpener (non-electric, hand held only, no metal cover, maximum 2" length)", or "Tennis Shoes (no shades of red or blue, low mid, or high tops are permitted, must be predominantly white in color, no K-Swiss, Bugle Boys, Joy Walkers, Pumps, Gels, British Knights or Airlifts). Shoe laces, white only, not to exceed \$75.00, no hidden compartments, zippers, or laces that are covered or concealed, no metal components including eyelets."

DETERMINATION

OAL determines that the Memorandum meets the definition of an underground regulation, is subject to the rulemaking requirements of the APA, and, therefore, was issued in violation of the APA.

FACTUAL BACKGROUND

On March 7, 2005, in a memorandum issued to all CDCR institutions, Suzan Hubbard, the Deputy Director of CDCR indicated that the APPS had been adopted to standardize allowable inmate property. Prior to this memorandum each institution determined what property would be allowed and in what quantities. The APPS was added to the DOM to ensure that inmates would not be subject to arbitrary or conflicting rules when transferring to different institutions. CDCR reasoned that a limitation in type and quantity of items allowed by inmates is necessary to protect both inmates and staff at institutions.

UNDERGROUND REGULATIONS

Section 11340.5, subdivision (a), prohibits state agencies from issuing rules unless the rules comply

¹ Unless specified otherwise code references are to the California Government Code.

with the Administrative Procedure Act (APA). It states as follows:

(a) No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in [Government Code] Section 11342.600, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to [the APA].

When an agency employs a rule in violation of section 11340.5 it is employing an underground regulation. "Underground regulation" is defined in title 1, Cal. Code Regs. § 250 as follows:

"Underground regulation" means any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, including a rule governing a state agency procedure, that is a regulation as defined in Section 11342.600 of the Government Code, but has not been adopted as a regulation and filed with the Secretary of State pursuant to the APA and is not subject to an express statutory exemption from adoption pursuant to the APA.

To determine that an agency employs an underground regulation in violation of section 11340.5, it must be demonstrated that the agency employs a regulation, that the regulation has not been adopted pursuant to the APA, and that the rule is not subject to an express statutory exemption from the APA.

OAL is empowered to issue its determination as to whether or not an agency employs an underground regulation pursuant to section 11340.5(b). An OAL determination that an agency is using an underground regulation is not enforceable against the agency through any formal administrative means, but it is entitled to "due deference"² in any subsequent litigation of the issue.

DEPARTMENT OPERATIONS MANUAL

For many years, the CDCR, through its predecessor agencies, maintained a "family of manuals." These manuals contained most of the statewide rules governing prison administration. In 1990, these individually titled one-volume manuals were replaced by a nine-volume compendium entitled the "Department of Corrections Operations Manual" or DOM. The APPS is found in Chapter 5 of the DOM starting with Article 43, section 54030.17.

Before the adoption of the DOM, a number of judicial decisions and OAL determinations found that various

² *Grier v. Kizer* 219 Cal.App.3d 422, 268 Cal.Rptr. 244; 1990

CDCR manuals and manual provisions violated the statutory prohibition against agency use of “underground regulations” found in Government Code section 11340.5. In 1982, for example, the California Court of Appeal struck down Forms 839 and 840 (new classification standards), which had been issued as part of an administrative bulletin for inclusion in the Classification Manual.³ In 1987, OAL determined that the Classification Manual itself contained regulatory material and thus violated Government Code section 11340.5.⁴

In 1991, the California Court of Appeal ordered the Department to cease enforcement of the regulatory portions of DOM.⁵ In this latter case, the Department had conceded that “much” of DOM violated the APA; the court found that “a substantial part” was regulatory (i.e., subject to the APA).

ANALYSIS

A determination of whether the challenged rules are “regulations” subject to the Administrative Procedure Act (APA) depends on (1) whether the challenged rules contain “regulations” within the meaning of section 11342.600, and (2) whether the challenged rules fall within any recognized exemption from APA requirements.

A regulation is defined in section 11342.600:

. . . every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

In *Tidewater Marine Western Inc. v. Victoria Bradshaw*, 14 Cal.4th 557, 571 (1996), the California Supreme Court found that

A regulation subject to the Administrative Procedure Act (APA) (Gov. Code, § 11340 et seq.) has two principal identifying characteristics. First, the agency must intend its rule to apply generally, rather than in a specific case. The rule need not, however, apply universally; a rule applies

generally so long as it declares how a certain class of cases will be decided. Second, the rule must implement, interpret, or make specific the law enforced or administered by the agency, or govern the agency’s procedure (Gov. Code, § 11342, subd. (g)).

The first element of a regulation is whether the rule applies generally. The APPS in question here applies to all prisoners in California institutions and therefore it applies to a clearly identified class of persons. CDCR, in a letter dated March 7, 2005, indicated that the APPS is intended to standardize property rules throughout California institutions. The first element is, therefore, met.

The second element is that the rule must implement, interpret or make specific the law enforced or administered by the agency, or govern the agency’s procedure. Penal Code section 5058 gives CDCR broad authority to prescribe and amend rules and regulations for the administration of California institutions. It is well within CDCR’s statutory mandate to determine the quantities and types of property that an inmate may have. The APPS indicates what items will be allowed and in what quantity. This clearly implements, interprets or makes specific Penal Code section 5058, the law enforced or administered by CDCR. The second element in the *Tidewater* case is met.

The final issue to examine in determining whether CDCR has created an underground regulation by issuing the APPS is determining if there is an exemption from the APA. The CDCR has not called our attention to, nor have we located, any statutory provision expressly exempting rules of the CDCR from the APA. OAL therefore concludes that APA rulemaking requirements generally apply to the CDCR.

In its reply to the petition, CDCR argues:

1. The type and amount of personal property available to inmates changes constantly in response to the products available and carried by vendors and in reaction to security breaches involving the property. To require the APPS to be placed into regulation would be to require them to undergo “perpetual rulemaking.”
2. That case law, in the form of *Alfaro v. Terhune*, 98 Cal.App.4th 492 (2002), allows for discretion on the part of an agency in deciding whether regulations are necessary or appropriate.
3. That by approving regulations that cover much of what is contained in the DOM regarding inmate property, the OAL has given tacit approval of the APPS.

³ *Stoneham v. Rushen* (1982) 137 Cal.App.3d 729, 188 Cal.Rptr. 130

⁴ 1987 OAL Determination No. 3, CRNR 87, No. 12–Z, March 20, 1987, p. B–74.

⁵ *Tooma v. Rowland* (Sep. 9, 1991) California Court of Appeal, Fifth Appellate District, F015383 (granting writ of mandate ordering Director of Corrections “to cease enforcement of those portions of the Department Operations Manual that require compliance with the Administrative Procedure Act pending proof of satisfactory compliance with the provisions of the Act,” typed opinion, pp. 3–4).

The first argument is undoubtedly true; however, the need to undergo “perpetual rulemaking” does not fall within any express statutory exemption to the APA.⁶ OAL can only determine whether a rule meets the definition of an underground regulation. We cannot create exemptions where none specifically exist by statute. If an emergent situation requires immediate action, CDCR has the ability to use the APA’s emergency rule-making procedure or CDCR’s own unique ability to adopt regulations using “operational necessity” pursuant to Penal Code section 5058.3⁷.

In the second argument, CDCR cites *Alfaro v. Terhune*, 98 Cal.App.4th 492 (2002), which states that agencies should be given discretion in deciding whether to adopt regulations or not. However, the court made this ruling very narrow by continuing, “The test is whether, giving due deference to the discretion of the agencies charged with implementing the Act, it can be said that the Act is too vague and indefinite to be implemented without administrative regulations.”

In this instance the statutes that CDCR has implemented, interpreted, and made specific are vague and

indefinite in terms of what property a prisoner may have. They do not list in detail what items of property a prisoner may have and in what quantity. The relevant statutes are general in nature and are not sufficient without regulations. In this instance CDCR does not meet the rule of *Alfaro v. Terhune* which says that, “To be enforceable, a law must be sufficiently precise as to give a person of ordinary intelligence a reasonable opportunity to know what is required and provide a sufficient standard for enforcement so that arbitrary and discriminatory enforcement may be avoided.”

CDCR’s final argument is that CDCR has already adopted regulations concerning personal property and that OAL gave tacit permission to the use of the APPS. The regulations are found in Title 15, California Code of Regulations, sections 3044, 3314, and 3315. These sections link personal property to the inmate’s classification. They do not, however, include any level of specificity of the amount or type of such property. By adopting partial regulations on the issue, and by the express terms of the APPS itself, CDCR has acknowledged the need for standards of general application to control inmates’ personal property.

CDCR’s response states that it adopted those regulations establishing the essential regulatory framework for inmate property. It relied on OAL’s expertise in adopting this approach. We have reviewed the entire rulemaking record for the regulations cited by CDCR and we find no evidence in the record that would confirm any discussion of a document like the APPS. There may have been a misunderstanding between OAL and CDCR during the review of the prior regulations, however, OAL cannot perpetuate a situation which is in violation of the APA.

CONCLUSION

In the past each individual institution made the decision on what items of property an inmate could maintain. However, when CDCR in 2005 promulgated a general rule for all institutions indicating what and how much property inmates may have they created an underground regulation. By requiring the APPS to be used within each institution CDCR is enforcing an underground regulation.

February 16, 2007

/s/
WILLIAM L. GAUSEWITZ
Director

P. GIBSON
Staff Counsel
Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, CA 95814
(916) 323-6225

⁶ Government Code section 11346

⁷ Penal Code section 5058.3 provides: “(a) Emergency adoption, amendment, or repeal of a regulation by the director shall be conducted pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, except with respect to the following:

“(1) Notwithstanding subdivision (e) of Section 11346.1 of the Government Code, the initial effective period for an emergency adoption, amendment, or repeal of a regulation shall be 160 days.

“(2) Notwithstanding subdivision (b) of Section 11346.1 of the Government Code, no showing of emergency is necessary in order to adopt, amend, or repeal an emergency regulation if the director instead certifies, in a written statement filed with the Office of Administrative Law, that operational needs of the department require adoption, amendment, or repeal of the regulation on an emergency basis. The written statement shall include a description of the underlying facts and an explanation of the operational need to use the emergency rulemaking procedure. This paragraph provides an alternative to filing a statement of emergency pursuant to subdivision (b) of Section 11346.1 of the Government Code. It does not preclude filing a statement of emergency. This paragraph only applies to the initial adoption and one readoption of an emergency regulation.

“(3) Notwithstanding subdivision (b) of Section 11349.6 of the Government Code, the adoption, amendment, or repeal of a regulation pursuant to paragraph (2) shall be reviewed by the Office of Administrative Law within 20 calendar days after its submission. In conducting its review, the Office of Administrative Law shall accept and consider public comments for the first 10 calendar days of the review period. Copies of any comments received by the Office of Administrative Law shall be provided to the department.

“(b) It is the intent of the Legislature, in authorizing the deviations in this section from the requirements and procedures of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, to authorize the department to expedite the exercise of its power to implement regulations as its unique operational circumstances require.”

SUMMARY OF REGULATORY ACTIONS

REGULATIONS FILED WITH SECRETARY OF STATE

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA, 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

DENTAL BOARD OF CALIFORNIA

Application for Licensure by WREB Candidates

This regulatory action makes permanent a set of emergency regulations that established new provisions for licensure for the practice of dentistry in California. These regulations implement and make specific statutory changes that allow dental licensure candidates to qualify to practice dentistry in California if they pass the Western Regional Examining Board (WREB) exam and meet other currently existing requirements.

Title 16

California Code of Regulations

ADOPT: 1034.1 AMEND: 1021, 1028, 1034

Filed 02/15/07

Effective 02/15/07

Agency Contact: Donna Kantner (916) 263-2300

DEPARTMENT OF FOOD AND AGRICULTURE

Oak Mortality Disease Control

This action is the Certificate of Compliance filing making permanent the prior emergency amendment of the regulation which added four plant species to the list of hosts or potential carriers of the disease, eight plant species to the list of associated articles (nursery stock), and specified the particular cultivars of Rosa covered by the regulation. The prior emergency filing made permanent here is OAL file number 06-0929-01E.

Title 3

California Code of Regulations

AMEND: 3700(c)

Filed 02/14/07

Effective 02/14/07

Agency Contact: Stephen Brown (916) 654-1017

DEPARTMENT OF FOOD AND AGRICULTURE

Personal Licenses: Fluid Milk Composition Testing

This rulemaking action clarifies the application forms and requirements for persons applying for ex-

amination and licensure for processing milk or milk products in California. It also updates the fluid milk compositional testing standards and makes nonsubstantive wording, grammatical, and organizational changes.

Title 3

California Code of Regulations

ADOPT: 499.5, 513, 513.5 AMEND: 498, 499, 500, 501, 502, 504, 505, 509, 510, 511, 512, 512.1, 512.2, 514, 515, 516, 517, 525, 551, 552, 553, 554, 604.1

REPEAL: 499.5, 503, 506, 508, 512.3, 527, 536, 537, 538, 539, 540, 541, 543, 544, 546, 547, 550

Filed 02/15/07

Effective 03/17/07

Agency Contact: Nancy Grillo (916) 651-7280

DEPARTMENT OF HEALTH SERVICES

Prenatal Screening Fee Increase (Pursuant to SB 1555)

This change without regulatory effect increases the current \$105 prenatal screening fee for maternal serum alpha fetoprotein plus one or more additional markers used for screening for NTD and Down Syndrome by \$50, of which \$10 will go to the California Birth Defects Monitoring Program and \$40 will go towards Prenatal Screening expansion, pursuant to recent amendments to sections 124977 and 125055 of the Health and Safety Code (Stats. 2006, ch. 484; SB 1555), respectively.

Title 17

California Code of Regulations

AMEND: 6540

Filed 02/16/07

Effective

Agency Contact: Jasmin Delacruz (916) 657-0501

DEPARTMENT OF INDUSTRIAL RELATIONS

Workers' Compensation — Predesignation of Personal Physician

Department of Industrial Relations, Division of Workers' Compensation submitted this action without regulatory effect to amend two Title 8 regulations for employee pre-designation of a personal physician—section 9780(f), which defines “personal physician,” and section 9783, the Predesignation of Personal Physician form (Optional DWC Form 9783—Effective March 2006). Revisions to 9780(f) and Form 9783 add and define “medical group” as a personal physician, consistent with revision to Labor Code sec. 4600(d)(2)(D) in AB 2068 (Stats. 2006, ch. 819). Revision to Form 9783 also changes the form date to “March 1, 2007” and removes the word “Effective” from the form number.

Title 8
California Code of Regulations
AMEND: 9780, 9783
Filed 02/21/07
Effective
Agency Contact: Destie Overpeck (415) 703-4659

DIVISION OF WORKERS COMPENSATION
Worker's Compensation Official Medical Fee Schedule
—Physician Services

This filing amends the maximum reimbursement rate for physician services and was submitted as exempt from the Administrative Procedure Act and review by the Office of Administrative Law pursuant to section 11340(g) of the Government Code.

Title 8
California Code of Regulations
AMEND: 9789.11
Filed 02/15/07
Effective 02/15/07
Agency Contact: Richard Starkeson (415) 703-4993

RESPIRATORY CARE BOARD
Home Respiratory Care

Respiratory Care Board submitted amendment to section 1399.302 and adoption of section 1399.360 of Title 16 to establish criteria and conditions under which an unlicensed individual may perform basic, minor services related to home respiratory care pursuant to Business and Professions Code 3765(h). Services are limited to delivery, setup, and usage instructions of specified home respiratory care equipment.

Title 16
California Code of Regulations
ADOPT: 1399.360 AMEND: 1399.302
Filed 02/14/07
Effective 03/16/07
Agency Contact: Christine Molina (916) 323-9983

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION
BCDC Certified

This rulemaking amends §§10214, 10381, 10500, 10620, 11002, 11003, and 11005 of Title 14. These amendments are made to clarify that the SFBCDC will consult with all agencies that have jurisdiction by law when reviewing an application for a permit or permit amendment or when processing either the adoption of or an amendment to a SFBCDC plan. These amendments also make clear that the Commission will summarize and respond to all significant environment points raised during the processing of a permit applica-

tion or the proposed adoption or amendment to a SFBCDC plan.

Title 14
California Code of Regulations
AMEND: 10214, 10381, 10500, 10620, 11002, 11003, 11005
Filed 02/16/07
Effective 03/18/07
Agency Contact: Jeffry Blanchfield (415) 352-3654

STATE ALLOCATION BOARD
Leroy F. Greene School Facilities Act of 1998

In this Certificate of Compliance regulatory action, the State Allocation Board amends regulations pertaining to the Leroy F. Greene School Facilities Act to provide an additional new construction grant for "General Site Development" costs and to make other miscellaneous changes to program regulations.

Title 2
California Code of Regulations
AMEND: 1859.2, 1859.76, 1859.83, 1859.163.1, 1859.167, 1859.202, 1866
Filed 02/16/07
Effective 02/16/07
Agency Contact: Lisa Jones (916) 322-1043

STATE WATER RESOURCES CONTROL BOARD
Establish TMDL for Bacteria in Creek, Estuary, & Sepulveda Chan.

On June 8, 2006, the Los Angeles Regional Water Quality Control Board (Los Angeles Water Board) adopted Resolution R4-2006-011 amending the Water Quality Control Plan for the Los Angeles Region (Basin Plan) by establishing the Total Maximum Daily Load (TMDL) for bacteria in Ballona Creek, Ballona Estuary, and Sepulveda Channel. On November 15, 2006, the State Water Resources Control Board approved this amendment under Resolution No. 2006-0092.

Title 23
California Code of Regulations
ADOPT: 3939.24
Filed 02/20/07
Effective
Agency Contact: Rik Rasmussen (916) 341-5549

STATE WATER RESOURCES CONTROL BOARD
Operator Certification Program Enforcement

The SWRCB classifies certain wastewater treatment plants by the level of treatment provided and establishes the level of operator certification and competence necessary to operate each plant. In addition, the SWRCB is authorized to refuse an operator's certification, or to suspend, revoke or otherwise discipline a certificate holder. The SWRCB created an Office of Operator Cer-

tification within its Division of Financial Assistance to administer the operator certification program. As part of a reorganization plan in 2006, SWRCB bifurcated the duties of the Operator Certification program and created a new Office of Enforcement (to investigate allegations of operator misconduct and initiate disciplinary actions against operators).

Title 23

California Code of Regulations

AMEND: 3671, 3711, 3712, 3713, 3719.18

Filed 02/20/07

Effective 02/20/07

Agency Contact: David M. Boyers (916) 341-5182

SUPERINTENDENT OF PUBLIC INSTRUCTION
School Community Violence Prevention Grant Program

Third readoption of emergency regulations that establish requirements for local education agencies, defined as county offices of education and local school boards, to apply for and receive grants for school violence prevention programs.

Title 5

California Code of Regulations

ADOPT: 11987, 11987.1, 11987.2, 11987.3, 11987.4, 11987.5, 11987.6, 11987.7

Filed 02/16/07

Effective 02/16/07

Agency Contact: Debra Strain (916) 319-0641

**CCR CHANGES FILED
WITH THE SECRETARY OF STATE
WITHIN SEPTEMBER 20, 2006 TO
FEBRUARY 21, 2007**

All regulatory actions filed by OAL during this period are listed below by California Code of Regulations titles, then by date filed with the Secretary of State, with the Manual of Policies and Procedures changes adopted by the Department of Social Services listed last. For further information on a particular file, contact the person listed in the Summary of Regulatory Actions section of the Notice Register published on the first Friday more than nine days after the date filed.

Title 2

02/16/07 AMEND: 1859.2, 1859.76, 1859.83, 1859.163.1, 1859.167, 1859.202, 1866
02/02/07 AMEND: 2561, 2563, 2564, 2565, 2566, 2567
01/26/07 ADOPT: 599.550, 599.552, 599.553, 599.554 AMEND: 599.500
01/19/07 ADOPT: 18531.62, 18531.63, 18531.64 AMEND: 18544

01/11/07 AMEND: 1894.4, 1896.12
01/09/07 ADOPT: 18530.3
01/09/07 ADOPT: 18534
01/09/07 AMEND: 18707.1
01/08/07 ADOPT: 1859.106.1 AMEND: 1859.106
12/22/06 AMEND: 21906
12/18/06 AMEND: 1859.2, 1859.70.1, 1859.71.3, 1859.78.5
12/18/06 AMEND: 18703.4, 18730, 18940.2, 18942.1, 18943
12/18/06 AMEND: 18312, 18316.5, 18326, 18401, 18521, 18537.1, 18704.5, 18705.5, 18730, 18746.2
12/18/06 ADOPT: 18421.3
12/18/06 AMEND: 18545
12/14/06 ADOPT: 18707.10
12/13/06 ADOPT: 20108, 20108.1, 20108.12, 20108.15, 20108.18, 20108.20, 20108.25, 20108.30, 20108.35, 20108.36, 20108.37, 20108.38, 20108.40, 20108.45, 20108.50, 20108.51, 20108.55, 20108.60, 20108.65, 20108.70, 20108.75, 20108.80
11/06/06 AMEND: 18216, 18421.1
11/03/06 AMEND: 1859.73.2
10/31/06 AMEND: 559.500, 559.501, 559.503, 559.504, 559.505, 559.507, 559.508, 559.509, 559.510, 559.511, 559.512, 559.513, 559.515, 559.516, 559.517
10/12/06 AMEND: 714
09/27/06 AMEND: 18754

Title 3

02/15/07 ADOPT: 499.5, 513, 513.5 AMEND: 498, 499, 500, 501, 502, 504, 505, 509, 510, 511, 512, 512.1, 512.2, 514, 515, 516, 517, 525, 551, 552, 553, 554, 604.1 REPEAL: 499.5, 503, 506, 508, 512.3, 527, 536, 537, 538, 539, 540, 541, 543, 544, 546, 547, 550
02/14/07 AMEND: 3700(c)
02/08/07 AMEND: 3433(b)
02/08/07 AMEND: 6170, 6172, 6200
02/07/07 AMEND: 6170, 6172, 6200
01/31/07 AMEND: 3591.12(a)
01/24/07 AMEND: 3591.13(a)
01/18/07 AMEND: 3423(b)
01/18/07 AMEND: 3433(b)
01/18/07 AMEND: 3433(b)
01/18/07 AMEND: 3800.1, 3800.2
01/09/07 AMEND: 3433(b)
01/08/07 AMEND: 3591.2(a)

| | | | |
|----------------|--|----------------|---|
| 01/08/07 | AMEND: 3591.6(a) | 02/08/07 | ADOPT: 1000, 1000.1, 1000.2, 1000.3, 1000.4, 1000.5, 1000.6, 1000.7 |
| 01/05/07 | AMEND: 6625 | 01/10/07 | AMEND: 55806 |
| 01/05/07 | AMEND: 3406(b) | 11/13/06 | AMEND: 18013, 18054 |
| 01/05/07 | AMEND: 3433(b) | 11/08/06 | AMEND: 850, 851, 852, 853, 854, 855, 857, 858, 859, 861, 862, 863, 864, 864.5, 865, 866, 867, 870 REPEAL: 850.5, 880, 881, 882, 883, 884, 886, 887, 888, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 901 |
| 01/03/07 | AMEND: 3424(b) | 10/26/06 | AMEND: 30023(c) |
| 12/20/06 | AMEND: 3423(b) | 10/23/06 | ADOPT: 11991, 11991.1, 11991.2 |
| 12/20/06 | AMEND: 3433(b) | 10/16/06 | ADOPT: 11987, 11987.1, 11987.2, 11987.3, 11987.4, 11987.5, 11987.6, 11987.7 |
| 12/19/06 | ADOPT: 6310, 6312, 6314 AMEND: 6170 | 09/29/06 | ADOPT: 19833.5, 19833.6 AMEND: 19815, 19816, 19816.1, 19819, 19824, 19828.1, 19831 |
| 12/06/06 | AMEND: 3700(c) | Title 8 | |
| 12/06/06 | AMEND: 3591.6 | 02/21/07 | AMEND: 9780, 9783 |
| 11/30/06 | ADOPT: 6128 AMEND: 6130 | 02/15/07 | AMEND: 9789.11 |
| 11/16/06 | AMEND: 3433(b) | 12/29/06 | AMEND: 1598, 1599 |
| 11/13/06 | AMEND: 3423(b) | 12/27/06 | AMEND: 3385 |
| 11/08/06 | AMEND: 3591.2(a) | 12/21/06 | AMEND: 5031 |
| 10/27/06 | ADOPT: 765 AMEND: 760.4, Article 3.5 | 12/15/06 | AMEND: 5006.1 |
| 10/19/06 | AMEND: 3591.6(a) | 11/14/06 | AMEND: 3482, 5161, 5178 |
| 10/12/06 | AMEND: 3433(b) | 11/14/06 | AMEND: 6368 |
| 10/12/06 | ADOPT: 3424 | 11/08/06 | AMEND: 17000 Appendix |
| 10/12/06 | AMEND: 3433(b) | 11/02/06 | AMEND: 3650 |
| 10/06/06 | AMEND: 3591.13(a) | 10/18/06 | AMEND: 9768.5, 9768.10, 9788.11, 9788.31, 9789.33 |
| 10/06/06 | AMEND: 3700(c) | 09/29/06 | AMEND: 341, 341.1 |
| 10/05/06 | AMEND: 3589 | 09/25/06 | AMEND: 4920 |
| 10/05/06 | AMEND: 3433(b) | 09/21/06 | ADOPT: 10001, 10002, 10003 |
| 10/02/06 | AMEND: 3591.6(a) | Title 9 | |
| Title 4 | | 12/29/06 | ADOPT: 3100 3200.010, 3200.020, 3200.030, 3200.040 3200.050, 3200.060, 3200.070, 3200.080, 3200.090, 3200.100, 3200.110, 3200.120, 3200.130, 3200.080, 3200.090, 3200.150, 3200.160, 3200.170, 3200.180, 3200.190, 3200.210, 3200.220, 3200.230, 3200.240, 3200.250, 3200.260, 3200.270, 3200.280, 3200.300, 3200.310, 3300, 3310, 3315, 3320, 3350, 3360, 3400, 3405, 3410, 3415, 3500, 3505, 3510, 3520, 3530, 3530.10, 3530.20, 3530.30, 3530.40, 3540, 3610, 3615, 3620, 3620.05, 3620.10, 3630, 3640, 3650 |
| 02/08/07 | ADOPT: 12550, 12552, 12554, 12556, 12558, 12560, 12562, 12564, 12566, 12568, 12572 | 11/21/06 | AMEND: 9100 |
| 02/08/07 | ADOPT: 12341 | 09/25/06 | ADOPT: 3400 |
| 01/31/07 | AMEND: 12590 | | |
| 01/30/07 | AMEND: 12358 | | |
| 01/30/07 | ADOPT: 12460, 12461, 12462, 12463, 12464, 12466 | | |
| 01/30/07 | AMEND: 12101, 12301.1, 12309 | | |
| 01/26/07 | AMEND: 1433 | | |
| 01/17/07 | ADOPT: 523 | | |
| 01/11/07 | AMEND: 1536 | | |
| 12/05/06 | AMEND: 1582 | | |
| 11/22/06 | AMEND: 1544 & 1658 | | |
| 11/16/06 | ADOPT: 2422.1 | | |
| 11/03/06 | AMEND: 10152, 10153, 10155, 10159, 10160, 10161, 10162 | | |
| 10/24/06 | AMEND: 1486 | | |
| 10/16/06 | AMEND: 1733 | | |
| 09/26/06 | AMEND: 1976.8 | | |
| Title 5 | | | |
| 02/16/07 | ADOPT: 11987, 11987.1, 11987.2, 11987.3, 11987.4, 11987.5, 11987.6, 11987.7 | | |

Title 10

01/23/07 ADOPT: 2183, 2183.1, 2183.2, 2183.3,
2183.4 REPEAL: 2691.18, 2691.19

01/10/07 AMEND: 3528

01/08/07 AMEND: 2698.52(c), 2698.53(b),
2698.56(c)

01/03/07 ADOPT: 2642.4, 2643.8, 2644.24,
2644.25, 2644.26, 2644.27, 2644.50,
AMEND: 2642.5, 2642.6, 2642.7,
2643.6, 2644.2, 2644.3, 2644.4, 2644.5,
2644.6, 2644.7, 2644.8, 2644.10,
2644.12, 2644.15, 2644.16, 2644.17,
2644.18, 2644.19, 2644.20, 2644.21,
2644.23

12/29/06 ADOPT: 5327, 5357.1, 5358, 5358.1
AMEND: 5350, 5352

12/29/06 AMEND: 2052.1, 2052.4

12/29/06 AMEND: 2651.1, 2661.1, 2661.3,
2662.1, 2662.3, 2662.5

12/29/06 AMEND: 2632.5(c)

12/29/06 AMEND: 2222.10, 2222.11, 2222.12,
2222.14, 2222.15, 2222.16, 2222.17,
2222.19 REPEAL: 2222.13

12/29/06 AMEND: 2696.1, 2696.2, 2696.3,
2696.5, 2696.6, 2696.7, 2696.9, 2696.10
REPEAL: 2696.4, 2696.8

12/27/06 AMEND: 2498.6

12/26/06 ADOPT: 2698.80, 2698.81, 2698.82,
2698.83, 2698.84, 2698.85, 2698.86,
2698.87, 2698.88, 2698.89, 2698.89.1
AMEND: 2698.80, 2698.81, 2698.82,
2698.83, 2698.84, 2698.85, 2698.86

12/22/06 ADOPT: 2548.1, 2548.2, 2548.3, 2548.4,
2548.5, 2548.6, 2548.7, 2548.8

12/20/06 ADOPT: 2614, 2614.1, 2614.2, 2614.3,
2614.4, 2614.5, 2614.6, 2614.7, 2614.8,
2614.9, 2614.10, 2614.11, 2614.12,
2614.13, 2614.14, 2614.15, 2614.16,
2614.17, 2614.18, 2614.19, 2614.20,
2614.21, 2614.22, 2614.23, 2614.24,
2614.25, 2614.26, 2614.27

12/19/06 AMEND: 2690.90, 2690.91, 2690.92,
2690.93, 2690.94

12/13/06 ADOPT: 2534.40, 2534.41, 2534.42,
2534.43, 2534.44, 2534.45, 2534.46

11/15/06 AMEND: 2697.6, 2697.61

11/09/06 AMEND: 2498.5

11/09/06 AMEND: 2534.27, 2534.28

10/24/06 ADOPT: 2303, 2303.1, 2303.2, 2303.3,
2303.4, 2303.5, 2303.6, 2303.7, 2303.8,
2303.9, 2303.10, 2303.11, 2303.12,

2303.13, 2303.14, 2303.15, 2303.16,
2303.17, 2303.18, 2303.19, 2303.20,
2303.21, 2303.22, 2303.23, 2303.24,
2303.25

10/16/06 ADOPT: 2194.9, 2194.10, 2194.11,
2194.12, 2194.13, 2194.14, 2194.15,
2194.16, 2194.17

10/10/06 AMEND: 2498.4.9

10/03/06 AMEND: 2498.5

10/02/06 AMEND: 2248.4, 2249.1, 2249.2,
2249.6, 2249.7, 2249.8, 2249.9, 2249.10,
2249.11, 2249.12, 2249.13, 2249.14,
2249.15, REPEAL: 2248.11, 2248.12,
2248.19

09/20/06 AMEND: 2318.6, 2353.1

Title 11

02/02/07 ADOPT: 9070, 9071, 9072, 9073, 9076,
9077, 9078 AMEND: 1005, 1018, 1055,
REPEAL: 1011

02/02/07 ADOPT: 999.40

01/30/07 AMEND: 20

01/25/07 AMEND: 30.1

01/25/07 AMEND: 30.5

01/19/07 AMEND: 1005, 1007, 1080

12/21/06 AMEND: 48.6

12/21/06 AMEND: 1070, 1081, 1082

12/21/06 ADOPT: 80.3

10/13/06 AMEND: 30.5

10/13/06 AMEND: 30.1

Title 13

02/09/07 AMEND: 2702, 2703, 2704, 2706, 2707,
2709

01/18/07 AMEND: 1961, 1976, 1978

01/16/07 ADOPT: 2189 AMEND: 2180, 2180.1,
2181, 2182, 2183, 2185, 2186, 2187,
2188

12/27/06 ADOPT: 1300 REPEAL: 1300, 1301,
1302, 1303, 1304, 1304.1, 1305, 1310,
1311, 1312, 1313, 1314, 1315, 1320,
1321, 1322, 1323, 1324, 1325, 1330,
1331, 1332, 1333, 1334, 1335, 1336,
1337, 1338, 1339, 1339.1, 1339.2,
1339.3, 1339.4, 1339.5, 1339.6, 1340,
1341, 1342, 1343, 1344, 1350, 1351,
1352, 1353, 1354, 1355, 1356, 1360,
1361, 1362, 1363, 1364, 1365, 1366,
1370, 1371, 1372, 1373, 1374, 1375,
1400, 1401, 1402, 1403, 1404, 1405,
1406, 1410, 1411, 1412, 1413, 1414,
1415, 1416, 1417, 1418, 1420, 1421,
1422, 1423, 1424, 1425

12/13/06 AMEND: 553.70

| | | | |
|---------------------|--|--|--|
| 12/06/06 | ADOPT: 2022, 2022.1 | 1942, 1942.1, 1942.2, 1950.1, 1954, | |
| 12/01/06 | ADOPT: 2479 | 1960, 1961, 1962, 1963, 1966, 1971, | |
| 11/13/06 | AMEND: 2111, 2112, 2441, 2442, 2444.2, 2445.1, 2445.2, 2446 | 1981, 1981.2, 1995.1, 1996.8, 1997.1, 1997.2, 1997.3, 1997.4, 1997.5, 1998.2 | |
| 11/13/06 | AMEND: 2445.2(a) | 12/19/06 | AMEND: 105.1, 120.01, 149.1, 150, |
| 10/30/06 | ADOPT: 118.00 | 150.02, 150.03, 150.05, 180.3, 180.15, | |
| 10/27/06 | AMEND: 423.00 | 231 | ADOPT: 3413.1 |
| 10/16/06 | AMEND: 1956.8, 2404, 2424, 2425, 2485 | 12/05/06 | AMEND: 2305, 2310, 2320 |
| 10/05/06 | AMEND: Section 1 | 12/01/06 | AMEND: 163, 164 |
| Title 13, 17 | | 11/27/06 | ADOPT: 4970.49, 4970.50, 4970.51, 4970.52, 4970.53, 4970.54, 4970.55, 4970.56, 4970.57, 4970.58, 4970.59, 4970.60, 4970.61, 4970.62, 4970.63, 4970.64, 4970.65, 4970.66, 4970.67, 4970.68, 4970.69, 4970.70, 4970.71, 4970.72 |
| 12/27/06 | ADOPT: 93116.3.1 AMEND: 2452, 2456, 2461, 93115, 93116.2, 93116.3 | 11/27/06 | ADOPT: 18660.5, 18660.6, 18660.7, 18660.8, 18660.9, 18660.10, 18660.11, 18660.12, 18660.13, 18660.14, 18660.15, 18660.16, 18660.17, 18660.18, 18660.19, 18660.20, 18660.21, 18660.22, 18660.23, 18660.24, 18660.25, 18660.30, 18660.31, 18660.32, 18660.33 |
| 12/06/06 | ADOPT: 2299.1, 93118 | 11/22/06 | AMEND: 939.15, 959.15 |
| Title 14 | | 11/16/06 | AMEND: 916.5(e), 936.5(e), 956.5(e), 916.9, 936.9, 956.9 |
| 02/16/07 | AMEND: 10214, 10381, 10500, 10620, 11002, 11003, 11005 | 11/14/06 | AMEND: 5101, 5104 |
| 02/13/07 | AMEND: 53.03, 149, 149.1 | 11/07/06 | AMEND: 11900 |
| 02/08/07 | AMEND: 880 | 11/02/06 | AMEND: 183 |
| 02/05/07 | ADOPT: 2990, 2995, 2997 AMEND: 2125, 2518 | 10/19/06 | AMEND: 632(b)(72) |
| 01/18/07 | ADOPT: 27.20, 27.25, 27.30, 27.35, 27.40, 27.45, 27.50, 28.48, 28.49, 28.51, 28.52, 28.53, 28.57 AMEND: 1.91, 27.60, 27.65, 27.83 (amend and renumber to 27.51), 28.26, 28.27, 28.28, 28.29, 28.54, 28.55, 28.56, 28.58, 28.90, 701 REPEAL: 27.67, 27.82 | 10/11/06 | AMEND: 895, 895.1, 1038, 1038(f) |
| 12/28/06 | ADOPT: 25231 | 10/06/06 | AMEND: 670.2 |
| 12/26/06 | AMEND: 1690, 1691, 1692, 1693, 1694, 1695, 1696, 1697, 1698, 1712, 1714, 1720, 1721, 1721.2, 1721.3, 1721.3.1, 1721.4, 1721.5, 1721.6, 1721.7, 1721.8, 1721.9, 1722, 1722.1.1, 1722.3, 1722.4, 1722.5, 1722.7, 1723, 1723.5, 1723.7, 1723.8, 1723.9, 1724 1724.1, 1724.3, 1724.4, 1724.6, 1724.8, 1724.9, 1724.10, 1740.1, 1740.3, 1740.5, 1741, 1742, 1743, 1744, 1744.2, 1744.3, 1744.4, 1744.5, 1744.6, 1745, 1745.8, 1745.10, 1746.2, 1747, 1747.1, 1747.2, 1747.3, 1747.5, 1747.7, 1747.8, 1747.10, 1748.2, 1748.3, 1760, 1771, 1774, 1776, 1778, 1779, 1821, 1830, 1831, 1832, 1850, 1854, 1855, 1856, 1857, 1858, 1863, 1865, 1881, 1881.5, 1882, 1914, 1920.1, 1920.2, 1920.3, 1931, 1931.1, 1931.2, 1931.5, 1932, 1933.1, 1933.2, 1933.3, 1935.1, 1935.2, 1936, 1937.1, 1941, | 09/20/06 | AMEND: 895.1, 898, 914.8, [934.8, 954.8], 916, [936, 956], 916.2 [936.2, 956.2], 916.9, [936.9, 956.9], 916.11, [936.11, 956.11], 916.12, [936.12, 956.12], 923.3, [943.3, 963.3], 923.9, [943.9, 963.9] |
| Title 15 | | 02/05/07 | ADOPT: 3999.3 |
| | | 01/18/07 | ADOPT: 4034.0, 4034.1, 4034.2, 4034.3, 4034.4 REPEAL: 4036.0, 4040.0 |
| | | 12/19/06 | ADOPT: 3413.1 AMEND: 3413 |
| | | 12/04/06 | AMEND: 3041.2, 3053, 3177, 3331, 3375 |
| | | 11/03/06 | AMEND: 3375.2, 3377.1 |
| | | 11/03/06 | AMEND: 3084.1 |
| | | 10/06/06 | ADOPT: 2275 |

10/03/06 ADOPT: 3352.2 AMEND: 3350.1, 3352.1, 3354, 3358

Title 16

02/15/07 ADOPT: 1034.1 AMEND: 1021, 1028, 1034

02/14/07 ADOPT: 1399.360 AMEND: 1399.302

02/08/07 AMEND: 1397.12

02/02/07 AMEND: 3356

02/01/07 AMEND: 70

01/31/07 AMEND: 884

01/23/07 AMEND: 3305, 3306, 3307, 3308, 3309, 3310, 3315, 3316, 3320, 3321

01/11/07 ADOPT: 2475

01/10/07 AMEND: 974

12/27/06 ADOPT: 1713 AMEND: 1717

12/20/06 AMEND: 1397.61(b)

12/18/06 ADOPT: 980.2, 980.3 AMEND: 980.1

12/07/06 ADOPT: 1793.8 AMEND: 1793.7

12/05/06 AMEND: 1397.12

11/16/06 AMEND: 28

11/16/06 AMEND: 1397.60, 1397.61, 1397.62

11/16/06 ADOPT: 1399.170.20.1 AMEND: 1399.151.1

11/16/06 AMEND: 1351.5, 1352

11/15/06 AMEND: 4120, 4121, 4161, 4162

11/15/06 ADOPT: 1034.1 AMEND: 1021, 1028, 1034

11/08/06 AMEND: 4130

11/02/06 AMEND: 3394.6

10/31/06 AMEND: 100, 102, 109, 111, 117, 136

10/26/06 AMEND: 345

10/17/06 AMEND: 928

10/11/06 AMEND: 3303.2, 3340.15, 3340.18, 3340.32, 3340.42, 3394.5

10/03/06 AMEND: 70

09/28/06 AMEND: 1399.156.4

09/26/06 AMEND: 1579

Title 17

02/16/07 AMEND: 6540

01/09/07 AMEND: 93000

01/08/07 ADOPT: 2641.56, 2641.57 AMEND: 2641.30, 2641.45, 2641.55, 2643.5, 2643.10, 2643.15 REPEAL: 2641.75, 2641.77

11/27/06 AMEND: 94010, 94011, 94167, and Incorporated Documents

11/07/06 AMEND: 54342, 56076

11/06/06 AMEND: 1000600, 100601, 100602, 100603, 100604, 100605, 100606, 100607, 100608, 100609, 100610

10/26/06 AMEND: 2500, 2505

10/17/06 AMEND: 93102.5

10/12/06 ADOPT: 6500.1, 6500.5, 6500.19, 6500.25, 6500.28, 6500.31, 6500.35, 6500.39, 6500.45, 6500.46, 6500.57, 6500.59, 6500.65, 6500.67, 6500.69, 6500.70, 6500.74, 6500.77, 6500.80, 6501.2, 6502, 6504.2, 6504.4, 6504.6, 6506.2, 6506.6, 6506.8, 6506.10, 6506.12

10/10/06 ADOPT: 100010, 100020, 100030, 100040, 100050, 100060, 100070, 100080, 100090, 100095, 100100, 100110

10/05/06 ADOPT: 100001, 100002, 100003, 100004

10/04/06 AMEND: 57310(b)(3), 57332(c)(3)(A), 57332(9)(A)2.a

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12/26/06 AMEND: 1.161

12/14/06 AMEND: 1602, 1602.1, 1604, 1605, 1605.1, 1605.2, 1605.3, 1606, 1607, 1608

12/11/06 AMEND: 1605.3

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10/06/06 ADOPT: 10000, 10000.1, 10000.2, 10000.3, 10000.4, 10000.5, 10000.6, 10000.7, 10000.8, 10000.9, 10000.10, 10000.11, 10000.12, 10000.13

10/02/06 ADOPT: 1520, 1520.2, 1520.6, 1520.7, 1520.8, 1520.11, 1520.12, 1520.13, 1520.14 AMEND: 1520.1, 1520.3, 1520.5, 1520.9, 1520.10, 1520.15

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 01/29/07 AMEND: 12000
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 01/03/07 ADOPT: 101115 AMEND: 101115
 12/29/06 ADOPT: 66260.202
 12/29/06 AMEND: Appendix X of Chapter 11 of Division 4.5
 12/27/06 ADOPT: 66261.9.5, 67386.1, 67386.2, 67386.3, 67386.4
 11/28/06 AMEND: 4413, 4445, 4450 REPEAL: 4412.2, 4445.1, 4446
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 02/06/07 ADOPT: 3939.23
 01/29/07 AMEND: 3833.1
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12/26/06 ADOPT: 1433.1 AMEND: 1002, 1016, 1105, 1106, 1110, 1134, 1216, 1254, 1317, 1330, 1338, 1338.1, 1428, 1433, 1498, 1504, 2002, 2016, 2105, 2106, 2110, 2118, 2134, 2216, 2254, 2317, 2330, 2428, 2498, 2504
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 10/12/06 ADOPT: 30-785 AMEND: 30-700